

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION AT CLEVELAND

4 -----X
5 IN RE: : Case No. 1:17-md-2804
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20 Official Court Reporter: Lance A. Boardman, RDR, CRR
21 United States District Court
22 801 West Superior Avenue
23 Court Reporters 7-189
24 Cleveland, Ohio 44113
25 216.357.7019
 -----X

12 TRANSCRIPT OF JURY TRIAL PROCEEDINGS

14 HELD BEFORE THE HONORABLE DAN AARON POLSTER

16 SENIOR UNITED STATES DISTRICT JUDGE

20 Official Court Reporter: Lance A. Boardman, RDR, CRR
21 United States District Court
22 801 West Superior Avenue
23 Court Reporters 7-189
24 Cleveland, Ohio 44113
25 216.357.7019

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08:35:55 1 (In open court at 8:47 a.m.)

08:47:51 2 THE COURT: Okay. There were a couple things

08:47:52 3 I wanted to take up.

08:47:59 4 First some or all of the defendants moved to preclude

08:48:07 5 testimony from Nicole McCallion, who is a foster parent in

08:48:11 6 Lake County. Both sides made some good arguments.

08:48:19 7 I'm going to allow Ms. McCallion to testify, the

08:48:23 8 reason being the plaintiffs have to prove the existence of a

08:48:29 9 public nuisance today in both of the plaintiff counts, Lake

08:48:34 10 and Trumbull. Most of the testimony for a whole lot of

08:48:37 11 reasons goes back in time, but the plaintiffs have to prove

08:48:43 12 a public nuisance today, October of 2021.

08:48:51 13 One of the impacts of the public nuisance is a whole

08:48:54 14 lot of kids who lost one or both of their parents to opioid

08:49:00 15 addiction. Doesn't matter how the person got addicted. The

08:49:07 16 plaintiffs' theory is that at least one of the causes was

08:49:11 17 prescription opioid abuse, and there's testimony about it.

08:49:14 18 Whether the jury credits it or not is up to them.

08:49:19 19 So I looked at the excerpts that were provided to me

08:49:26 20 from Ms. McCallion's testimony, and she does detail that in

08:49:30 21 the first instance the responsibility for these children is

08:49:33 22 the county, Lake County Family Services. And one of the

08:49:39 23 things the county tries to do is find foster parents, and

08:49:42 24 under the state system in order to be eligible for

08:49:45 25 compensation, which I believe is provided by the State of

08:49:48 1 Ohio, a foster parent must be licensed. And it appears that
08:49:53 2 the county provides the training that a parent must go
08:50:02 3 through to get the license.

08:50:04 4 And so that's parts of the impact on the county, is
08:50:07 5 that the county has to pay for the personnel to do the
08:50:09 6 training. And I think Ms. McCallion opines that in her
08:50:16 7 view, the training should be more extensive.

08:50:18 8 So the point is that's relevant, but I'm not going to
08:50:21 9 let her go on and on detailing all the issues and details
08:50:26 10 with each of the kids that she's been a foster parent for
08:50:30 11 because I think that ceases to be relevant and may just be
08:50:36 12 to try and appeal to the emotions of the jurors.

08:50:39 13 So I will allow the testimony but limit it in a way
08:50:42 14 that it's relevant to what the jury has to decide.

08:50:49 15 Then CVS made some objections to the special master's
08:50:58 16 ruling on some of the designations for CVS employee
08:51:01 17 Michelle Travassos, probably the right pronunciation,
08:51:08 18 T-R-A-V-A-S-S-O-S.

08:51:12 19 I have ruled as a general matter that -- I mean, you
08:51:15 20 can show a document to anyone, but if the witness has not
08:51:19 21 seen it, the document doesn't show that he or she sent it or
08:51:23 22 received it and says, I know nothing about it, that's going
08:51:27 23 to be the end of the testimony. But there are times where
08:51:31 24 it's appropriate to have further examination of that
08:51:35 25 witness, of that document.

08:51:37 1 For example, if the person is responsible for
08:51:43 2 administering the monitoring system that that company has in
08:51:48 3 place for suspicious orders or suspicious prescriptions,
08:51:52 4 either help create or implement or design that program or is
08:51:56 5 monitoring it and has testified as to how it works, and you
08:52:01 6 have a document that in the ordinary course that person
08:52:04 7 should have received or at least the facts in that document
08:52:08 8 should have been brought to that person's attention, and it
08:52:11 9 wasn't, well, that's part of the plaintiffs' case.

08:52:14 10 The plaintiffs' case is that the system that each
08:52:20 11 defendant has was not adequate or, if the system looked to
08:52:24 12 be adequate, it really wasn't being used or effectuated
08:52:29 13 properly. And so in those cases, sometimes a document, it's
08:52:35 14 relevant to show that here's something that this person
08:52:38 15 should have been notified about or told about or counseled.
08:52:45 16 And the fact that he or she wasn't, well, that shows that
08:52:47 17 the system was not adequate. And it appears that may be the
08:52:50 18 case here.

08:52:51 19 Or if the witness is a knowledgeable, responsible
08:52:55 20 person and has testified, all right, this is how our system
08:52:59 21 worked, this is how -- who did what and this is how we were
08:53:02 22 notified of certain things and the document shows that it
08:53:05 23 didn't work that way, well, then it can be used to impeach
08:53:09 24 that person.

08:53:09 25 It looks like that's what is the situation with

08:53:16 1 Ms. Travassos. And so I'm going to overrule the objections.

08:53:21 2 It appears to me that questioning about that document is

08:53:26 3 relevant with this witness.

08:53:33 4 MR. DELINSKY: Your Honor, there's a second

08:53:34 5 issue as well.

08:53:35 6 THE COURT: I saw the -- the second issue,

08:53:38 7 Mr. Delinsky, I really don't think that objection is

08:53:42 8 well-founded. If the person -- you know, again, it's got to

08:53:50 9 be someone who's responsible for the program. You can't

08:53:53 10 just bring in anyone. But if you've got a person who's

08:53:57 11 responsible for designing the program, recommending or

08:54:03 12 implementing changes, obviously every defendant's program

08:54:07 13 evolved over a 10 or 15-year period. And if you've got a

08:54:11 14 responsible person, part of the -- one of the plaintiffs'

08:54:16 15 argument is that each of the defendants did -- whatever they

08:54:21 16 did was too little, too late, or if they finally made a

08:54:25 17 change in 2015 or 2017, they could have done that five years

08:54:28 18 earlier with the knowledge that they had. That's an

08:54:31 19 argument. Whether the jury accepts it or not, we'll see.

08:54:36 20 And so things that are being considered or were

08:54:43 21 considered or were feasible or is relevant to what each

08:54:50 22 company did or didn't do in this respect. Because, again,

08:54:56 23 no one's required to do something that is impossible or

08:55:04 24 impractical. So, but if something is considered, it may

08:55:11 25 be -- you know, and was rejected, the question, why was it

08:55:15 1 rejected. Or if it was implemented in 2019, why wasn't it
08:55:19 2 implemented earlier.

08:55:20 3 So, again, all that's relevant. In and of itself, it
08:55:26 4 doesn't -- may not prove anything, but, again, the standard
08:55:28 5 for relevance is whether it tends to make something an issue
08:55:34 6 in dispute more likely or not.

08:55:36 7 And so --

08:55:38 8 MR. DELINSKY: Your Honor, we're going to --
08:55:40 9 the plaintiffs just had raised an issue in their opposition
08:55:43 10 that we hadn't identified the exhibits and the page numbers.
08:55:46 11 It was a fair point.

08:55:47 12 We sent those over -- just so the record's clear,
08:55:50 13 we're going to put them on file, but I understand Your
08:55:52 14 Honor's ruling.

08:55:54 15 THE COURT: You know, again --

08:55:55 16 MR. DELINSKY: I don't think it changes your
08:55:56 17 ruling, Your Honor.

08:55:57 18 THE COURT: Again, it's way too late to be
08:56:01 19 presenting these. I'll say they're untimely.

08:56:04 20 MR. DELINSKY: But, Your Honor, they were
08:56:06 21 object objected to --

08:56:07 22 THE COURT: I know, but Mr. Delinsky, the fact
08:56:09 23 that something went to Special Master Cohen months ago,
08:56:12 24 you're raising it with me.

08:56:14 25 MR. DELINSKY: No, Your Honor, they went in

08:56:15 1 the last week and they weren't ruled upon until Tuesday
08:56:18 2 night.

08:56:18 3 THE COURT: Yeah, and it wasn't identified.

08:56:20 4 So I'm fine, you've submitted them, but --

08:56:23 5 MR. DELINSKY: But we understand Your Honor's
08:56:25 6 ruling.

08:56:25 7 THE COURT: In the future if you're objecting
08:56:27 8 to something, you've got to be very specific to what you're
08:56:30 9 objecting to, a specific question and answer or examination
08:56:34 10 on a specific document and here it is and why. So your --
08:56:38 11 it was -- in my opinion, it was too vague.

08:56:41 12 MR. DELINSKY: Okay. Well, Your Honor, just
08:56:43 13 so the record's clear, and we'll just put a submission so
08:56:48 14 our objections are clear that we did do that on a
08:56:52 15 line-by-line -- page-by-page, document-by-document basis
08:56:54 16 with Special Master Cohen. They were ruled upon Tuesday
08:56:57 17 night, so we proceeded to get just a few of the issues to
08:57:01 18 you as soon as possible.

08:57:01 19 Your Honor, there is a related issue though that I do
08:57:05 20 want to raise. Your Honor's ruling is Your Honor's ruling
08:57:07 21 and Your Honor knows we object. But there has been verbiage
08:57:11 22 in the case and not to call out Mr. Lanier, but regarding,
08:57:16 23 you know, we saw it yesterday about, you know, did you do
08:57:18 24 the very best you can. And it does raise the concern that
08:57:25 25 that's improper argument in this case where the -- we're not

08:57:29 1 a negligence case. You know, it's about, you know, did you
08:57:33 2 violate a certain law or did you act intentionally.

08:57:36 3 And this verbiage about did you do everything you
08:57:39 4 possibly could risks -- it's not the legal standard, and it
08:57:44 5 does risk confusion with the jury.

08:57:46 6 MR. LANIER: What Mr. Delinsky may not
08:57:48 7 remember and may not note on the record, but what I believe
08:57:51 8 to be the case is, that was the witness's answer to one of
08:57:54 9 the earlier questions. I didn't bring that standard up.

08:57:57 10 The witness said, we did the best we could. And I
08:58:01 11 challenged her on that. I said, was this the best you
08:58:04 12 could, was this the best you could, was this the best you
08:58:06 13 could.

08:58:06 14 I was cross-examining her on her comment and her
08:58:13 15 statement. I was not trying to change the Court's standard
08:58:17 16 on anything at all that we have to prove.

08:58:20 17 THE COURT: All right. Well, I think that is
08:58:22 18 how, Mr. Delinsky, how that back and forth occurred. So,
08:58:29 19 again, if a witness gives an answer in a certain way, that's
08:58:32 20 how -- and this is a responsible employee, that's how he or
08:58:36 21 she views his or her responsibility in this area, and those
08:58:44 22 are their words.

08:58:45 23 But I agree that that isn't the legal standard. Doing
08:58:52 24 the best you could is not -- there's going to be no
08:58:55 25 instruction that uses those languages -- that language. It

08:59:00 1 isn't there now, and I'm not -- it isn't going to be in the
08:59:04 2 instructions.

08:59:06 3 All right. It's almost 9:00. I may -- unless the --
08:59:11 4 I guess -- I don't want to forget to deal with the exhibits
08:59:16 5 of prior witnesses. I don't know if you've got something I
08:59:21 6 can do quickly. If not, I'll do it at the noon hour because
08:59:24 7 I don't have any other matters for other cases I need to
08:59:27 8 take up.

08:59:29 9 Maybe I can quickly deal with Tsipakis because there
08:59:34 10 are only a handful of exhibits.

08:59:37 11 MS. FIEBIG: Yes, Your Honor, and we have no
08:59:39 12 objections to the Tsipakis exhibits.

08:59:43 13 MS. FLEMING: Your Honor, we just have two
08:59:46 14 for Villanueva.

08:59:46 15 THE COURT: Maybe I can take care of both of
08:59:50 16 those. I just want to put these in the record. These are
08:59:52 17 all admitted without objection.

08:59:54 18 MS. FIEBIG: Your Honor, just before we go on,
08:59:56 19 we also have two for Villanueva.

08:59:58 20 THE COURT: Okay. I'll take care of the four.

09:00:02 21 P-00528, 09529, 09633, 09637, 09667, 09678, 09693,
09:00:19 22 11298, and 20654.

09:00:45 23 All right. Plaintiffs are offering the following two
09:00:47 24 exhibits for Mr. Villanueva: 04600.

09:00:57 25 MR. SWANSON: Your Honor, Brian Swanson for

09:00:59 1 Walgreens.

09:00:59 2 We do have an objection to that entire exhibit.

09:01:02 3 THE COURT: Well, I think it should be only
09:01:04 4 the pages that were -- that he testified to should come in.

09:01:08 5 MR. SWANSON: Correct.

09:01:08 6 THE COURT: There's a whole a lot of other
09:01:10 7 stuff that I think is irrelevant and wasn't referred to. So
09:01:13 8 if that's the objection, I'll sustain it. That comes in,
09:01:18 9 just the pages he testified about.

09:01:23 10 MR. WEINBERGER: Your Honor, with respect to
09:01:24 11 that exhibit, I just note for the record that the entire
09:01:32 12 OARRS report, which is pages 32, 33, 34, and 35, is
09:01:42 13 particularly what we would seek admission into the evidence.

09:01:47 14 As I understand it, the Court is allowing page 35,
09:01:53 15 which is the summary of the doctors and the pharmacies where
09:02:03 16 Winland had prescriptions filled.

09:02:11 17 THE COURT: All right. Well, page 35
09:02:13 18 definitely comes in. There was extensive testimony about
09:02:17 19 that.

09:02:17 20 MR. WEINBERGER: Right.

09:02:17 21 THE COURT: I guess I don't see any problem
09:02:19 22 with the -- those three pages of the OARRS report coming in
09:02:23 23 too.

09:02:24 24 MR. SWANSON: Your Honor, that's what we went
09:02:25 25 through over and over and over again, and you didn't allow

09:02:27 1 it.

09:02:31 2 THE COURT: All right. Well, let's just limit
09:02:32 3 it -- just page 35 is what he testified to. The OARRS
09:02:36 4 report is just confusing.

09:02:38 5 MR. WEINBERGER: Well, it is what he testified
09:02:39 6 to, but then when he got cross-examined and there was
09:02:45 7 reference to these other pages -- and as you know, we then
09:02:51 8 attempted to have him testify just going through those other
09:02:56 9 three pages to compile which pharmacies --

09:03:00 10 THE COURT: Well, that's the problem. That
09:03:02 11 goes into -- you know, that's the testimony I didn't allow.
09:03:04 12 So we're limiting it to page 35.

09:03:07 13 MR. LANIER: Here's my concern, Your Honor, if
09:03:10 14 I might.

09:03:11 15 With this witness that's on the stand right now,
09:03:14 16 Ms. Polster, the defendants on their own put in an OARRS
09:03:20 17 report to try to exculpate themselves.

09:03:25 18 MS. SWIFT: We did not, Your Honor. I
09:03:27 19 withdrew that.

09:03:28 20 MR. LANIER: It was never withdrawn formerly.
09:03:30 21 It was displayed on the screen. And there were questions
09:03:35 22 asked and they were never stricken.

09:03:38 23 And so I think to show a different OARRS report that
09:03:43 24 shows the opposite of what the OARRS report shown by
09:03:48 25 Ms. Swift showed is now highly relevant and one that I would

09:03:55 1 hope I would be able to get into with this witness.

09:03:57 2 MS. SWIFT: During the side bar, Your Honor --

09:04:00 3 THE COURT: Well, you can cross-examine this

09:04:02 4 witness on an OARRS report. I mean --

09:04:04 5 MS. SWIFT: Your Honor, during the side bar

09:04:06 6 you --

09:04:07 7 THE COURT: Well, I'm dealing with

09:04:11 8 Mr. Villanueva, and in my view with Villanueva, we're

09:04:14 9 just -- we're going to admit page 35.

09:04:18 10 Trumbull County Opioid Action Plan, 04598, any problem

09:04:22 11 with that?

09:04:23 12 MR. SWANSON: No objection, Your Honor.

09:04:26 13 THE COURT: Okay. That's in.

09:04:27 14 Defendants are offering two documents.

09:04:31 15 MR. SWANSON: Your Honor, it's actually we

09:04:32 16 have four more, Your Honor, that I can review.

09:04:35 17 THE COURT: All right. Have you asked the

09:04:36 18 plaintiffs if they have any objection to these?

09:04:38 19 MR. SWANSON: We sent them over.

09:04:40 20 THE COURT: 1326, any objection to that? I

09:04:44 21 think these were all used.

09:04:48 22 MR. FIEBIG: No plaintiffs are objecting to

09:04:50 23 that.

09:04:50 24 MR. LANIER: Are these Giant Eagle?

09:04:52 25 MS. FIEBIG: They're not. The 01326 was

09:04:56 1 offered by Giant Eagle.

09:04:57 2 THE COURT: 01326 and 13097, any objection to
09:05:02 3 those?

09:05:03 4 MS. FIEBIG: No, plaintiffs represented they
09:05:05 5 have no objection to it.

09:05:07 6 THE COURT: All right. They're in.

09:05:08 7 MR. WEINBERGER: Wait a minute. Hold on for a
09:05:09 8 second. When did we say that we had no objection?

09:05:11 9 MS. SULLIVAN: Yesterday I talked to Mark
09:05:13 10 about it.

09:05:14 11 MR. WEINBERGER: I'm sorry?

09:05:14 12 MS. SULLIVAN: I talked to Mr. Lanier about it
09:05:16 13 yesterday.

09:05:16 14 MR. WEINBERGER: So you have no objection to
09:05:18 15 the reports.

09:05:18 16 MR. LANIER: There were two documents you
09:05:19 17 offered yesterday, and I had no objection to them.

09:05:22 18 THE COURT: All right. Now, there were some
09:05:24 19 other documents.

09:05:25 20 MR. SWANSON: Mark, these are okay?

09:05:26 21 MR. LANIER: Those three are fine.

09:05:28 22 MR. SWANSON: Those two are fine.

09:05:29 23 THE COURT: Then I'll just read them into the
09:05:31 24 record. Thank you.

09:05:34 25 04964.

09:05:44 1 MR. SWANSON: I guess there are two that are
09:05:46 2 objected to, Your Honor.

09:05:51 3 THE COURT: Let's do it one by one.

09:05:52 4 04964, it's the guilty plea on Winland. That should
09:05:56 5 come in.

09:05:57 6 There's no objection to that, is there?

09:05:59 7 MR. LANIER: No objection, Judge.

09:06:01 8 THE COURT: All right. That's in.

09:06:02 9 And then 04965, that's the indictment of Winland.

09:06:06 10 MR. LANIER: No objection, Judge.

09:06:07 11 THE COURT: What others are there?

09:06:10 12 MR. SWANSON: Your Honor, the others are two
09:06:13 13 exhibits, but it's an e-mail that went to Mr. Villanueva
09:06:18 14 that he testified about, and then it's a report that's
09:06:22 15 attached to that e-mail that he also testified about.

09:06:24 16 MR. LANIER: And, Your Honor, I have no
09:06:26 17 objection to the e-mail. My objection is to the attachment
09:06:28 18 because I don't think it's been proven up as anything -- he
09:06:32 19 couldn't prove it up as anything. And it's like the other
09:06:39 20 Ohio Board of Pharmacy reports that we were trying to get
09:06:43 21 in, and I don't see that it comes in.

09:06:46 22 MR. SWANSON: But, I mean, he's making an
09:06:48 23 authenticity objection. The witness testified --

09:06:50 24 THE COURT: Yeah, I'll allow this. I'll allow
09:06:52 25 the attachment. The attachment's -- looks like it's 13052,

09:06:59 1 so that can come in.

09:07:05 2 Thank you. All right. Then we can bring in our --

09:07:08 3 bring in the jury.

09:08:49 4 (The jury is present at 9:08 a.m.)

09:09:12 5 THE COURT: Please be seated, ladies and
09:09:14 6 gentlemen. I hope you had a good evening.

09:09:15 7 And, Ms. Polster, you are still under oath.

09:09:17 8 So, Mr. Lanier, you may continue your questioning.

09:09:20 9 MR. LANIER: Thank you, Your Honor. May it
09:09:21 10 please this Court.

09:09:22 11 Ladies and gentlemen, good morning.

09:09:25 12 Ms. Polster, good morning to you as well.

09:09:26 13 THE WITNESS: Good morning.

09:09:28 14 NATASHA POLSTER

09:09:28 15 - - - - -

09:09:29 16 CROSS-EXAMINATION (CONT'D)

09:09:29 17 BY MR. LANIER:

09:09:29 18 Q We were well down the road. We were dealing with
09:09:31 19 training and good faith dispensing. I want to finish that
09:09:40 20 stop, two more stops and then I'll be finished. Okay?

09:09:45 21 A Okay.

09:09:46 22 Q Let's start out with this box of refusal to fill that
09:09:51 23 you had back there.

09:09:52 24 Do you remember this box?

09:09:53 25 A Yes.

09:09:53 1 **Q** It looks like at least the copy as it was given to me
09:09:55 2 shows three Redwelds and various copies of prescriptions and
09:10:05 3 refusals to fill, right?
09:10:06 4 **A** Right.
09:10:06 5 **Q** Now, mechanically let's talk about this for just a
09:10:20 6 moment, please.
09:10:22 7 These refusals to fill. These concern, by my math, I
09:10:28 8 counted 646 of them.
09:10:30 9 Does that seem about right with you?
09:10:32 10 **A** I did not count every one of them, but there's quite a
09:10:35 11 few in here.
09:10:35 12 **Q** About 646. Those are from the 12 Lake and Trumbull
09:10:43 13 County Walgreens stores from 2009 to 2020. Right?
09:10:47 14 **A** That's my understanding.
09:10:50 15 **Q** So that's roughly 53.8 per store, fair?
09:10:56 16 **A** Approximately, yes.
09:10:57 17 **Q** And that's about four and a half a year, maybe a
09:11:01 18 little different because maybe there's a year or two in
09:11:04 19 there where a store wasn't yet up and running or had closed?
09:11:08 20 **A** Fair.
09:11:08 21 **Q** But something on that order.
09:11:12 22 So that's the statistic that you're looking at when
09:11:15 23 you look at the refusals to fill, correct?
09:11:19 24 **A** By your math, but I have not looked at each one of
09:11:22 25 them nor have I looked at the dates of every one of them.

09:11:25 1 **Q** And in fairness, this math was done by someone on my
09:11:28 2 team, so it wasn't my math either.

09:11:31 3 **A** Great.

09:11:31 4 **Q** But they're really good at math, so I'm willing to
09:11:35 5 bank on it. Okay?

09:11:37 6 Here's the reason I'm asking: The real crux of the
09:11:42 7 matter is not this box. Our issue is not with when the
09:11:51 8 company refused to fill. Our issue is how many the company
09:11:56 9 did fill.

09:11:57 10 You understand that?

09:11:58 11 **A** I understand what you're saying.

09:11:59 12 **Q** In other words, great that the company didn't fill
09:12:05 13 these stores on average four and a half per store per year,
09:12:08 14 once a quarter. The question is, how many did they fill
09:12:13 15 that they shouldn't have.

09:12:15 16 You follow?

09:12:16 17 **A** I don't know how you know whether or not they
09:12:18 18 shouldn't have filled the prescription. You were not the
09:12:21 19 pharmacist. You didn't -- you were not exercising your
09:12:24 20 corresponding responsibility to ensure the prescription was
09:12:26 21 written for good faith, which is on the pharmacist
09:12:30 22 responsibility side.

09:12:32 23 **Q** Can you please answer my question?

09:12:35 24 **A** Your question was --

09:12:36 25 **Q** The issue in this case is not how many they didn't

09:12:39 1 fill. The issue in this case is how many they did fill.

09:12:43 2 Do you understand that?

09:12:44 3 **A** I understand you.

09:12:46 4 **Q** And the issue in this case is maybe there ought to be

09:12:49 5 20 boxes up there of refusals to fill instead of one.

09:12:54 6 MS. SWIFT: Objection. That's not the issue

09:12:55 7 in this case.

09:12:58 8 THE COURT: Overruled.

09:12:59 9 **Q** You understand?

09:13:01 10 **A** I understand.

09:13:01 11 **Q** And so did you go through those that were filled and

09:13:07 12 look at those good faith dispensing sheets?

09:13:11 13 **A** The filled prescriptions are audited by multiple
09:13:15 14 people in our field. Did I personally? No. But we rely on
09:13:20 15 our field leadership to go in and do their store walks,
09:13:25 16 their compliance checks ensuring that the good faith
09:13:35 17 dispensing checklists, which, by the way, are not a legal
09:13:32 18 requirement, were filled out per policy.

09:13:37 19 **Q** Okay. So in the midst of that answer is the answer to
09:13:39 20 my question no?

09:13:41 21 **A** I did not personally go through all the filled
09:13:43 22 prescriptions and look at the checklists, no.

09:13:45 23 **Q** Did you have someone do that?

09:13:47 24 **A** Yes, the field leaders.

09:13:50 25 **Q** Okay. So you've got someone that you're relying on.

09:13:54 1 Did they give you a report for this jury?

09:13:57 2 **A** I do not have a report, no.

09:14:00 3 **Q** Did you get a report from them after they went through

09:14:02 4 it so that you could testify to what they found to the jury?

09:14:04 5 **A** No.

09:14:05 6 **Q** You just had them look at those that were filled and

09:14:14 7 give you a verbal report?

09:14:18 8 **A** Part of the field leader's responsibility is to

09:14:22 9 escalate concerns that they have, and that is the process in

09:14:26 10 the field. So we do rely on the eyes and ears of our field

09:14:29 11 leaders to let us know.

09:14:32 12 And, no, I did not get a report back up to my office.

09:14:36 13 **Q** Okay. But I'm not sure that I'm hearing you

09:14:41 14 correctly.

09:14:41 15 I'm asking you in terms of this case, you went and got

09:14:48 16 this box of refusals to fill; is that right?

09:14:52 17 **A** We got copies of the refusal to fill from those

09:14:56 18 stores, yes.

09:14:56 19 **Q** Okay. By "we" was it you or was it someone else?

09:15:02 20 **A** It was requested -- I mean, I saw the box when I came

09:15:05 21 here for the prep, so someone else.

09:15:08 22 **Q** So this was done by the legal team, as far as you

09:15:12 23 know, not by you?

09:15:12 24 **A** Not by me personally, no.

09:15:14 25 **Q** Okay. And my question to you was, in getting ready

09:15:17 1 for this, in as you called it prep, did you have someone
09:15:23 2 look at the prescriptions that were filled and dispensed and
09:15:29 3 examine those sheets to see if they should have been?

09:15:31 4 **A** No.

09:15:32 5 **Q** Thank you.

09:15:34 6 And so as we look through this box of documents -- and
09:15:41 7 I don't know how it was marked, so I'm going to pull out and
09:15:44 8 mark one of the documents as Plaintiffs' Exhibit 22946. And
09:15:52 9 I don't know how you could best identify it, so I'm just
09:15:57 10 going to put it up here on the screen.

09:15:59 11 22946 is one of these sheets that you've got. And
09:16:06 12 it's one where there is a refusal to fill that's listed.
09:16:21 13 But if we look at each page on this, we've got the front
09:16:25 14 page. Walgreens has got a number on it, a Bates stamp
09:16:29 15 number.

09:16:30 16 For the record, we'll identify it as MDL01139001.
09:16:37 17 It's the document I've marked Plaintiffs' Exhibit 22946.

09:16:43 18 Do you see that?

09:16:44 19 **A** I do.

09:16:45 20 **Q** And the front page has got a bunch of redacted
09:16:47 21 information. I assume this is a screen grab of the screen.

09:16:52 22 **A** Of our computer system, yes.

09:16:54 23 MS. SWIFT: I apologize for interrupting.

09:16:55 24 Do you have a copy? Is there a copy for us?

09:17:00 25 MR. LANIER: The copy -- this is what you gave

09:17:02 1 me yesterday, so I'm assuming you have it.

09:17:06 2 MS. SWIFT: We can pull it out. I was just
09:17:07 3 wondering if you had it.

09:17:09 4 BY MR. LANIER:

09:17:09 5 **Q** It's got a second page with a screen; is that correct?

09:17:13 6 **A** Yes.

09:17:13 7 **Q** And then it's got a third page. This is the OARRS
09:17:17 8 report, isn't it?

09:17:18 9 **A** Correct.

09:17:19 10 **Q** And so we can look at this and we can see Trumbull
09:17:26 11 Pharmacy filling four prescriptions, we can see Discount
09:17:30 12 Drug Mart, back to Trumbull, we can see Walgreens filling
09:17:33 13 three, we've got Rite Aid, we've got more Walgreens,
09:17:38 14 Discount Drug Mart, more Walgreens, Discount Drug Mart, more
09:17:42 15 Walgreens.

09:17:43 16 And we can walk through and see all of the different
09:17:46 17 pharmacies that have filled for this person already,
09:17:50 18 correct?

09:17:52 19 **A** Yes.

09:17:53 20 **Q** And you'll see repeatedly that Walgreens, four
09:17:58 21 different Walgreens stores have filled --

09:18:07 22 MR. LANIER: What? Oh, thank you, Juan.

09:18:14 23 Sorry.

09:18:15 24 **Q** You'll see the synopsis page that you've got four
09:18:18 25 different Walgreens stores that had a number of

09:18:22 1 prescriptions filled, right?

09:18:23 2 **A** Yes, there were prescriptions filled by some Walgreens
09:18:26 3 stores.

09:18:26 4 **Q** And maybe one Walgreens store's refused to fill since
09:18:33 5 this was in the refusal to fill box, right?

09:18:39 6 **A** Yes.

09:18:39 7 **Q** Do you know when that Walgreens refuse to fill when it
09:18:48 8 just gives the prescription back to the person?

09:18:49 9 **A** There should be a date on the -- either the checklist,
09:18:52 10 there's a date on the OARRS report, which was 3/19/09.

09:18:58 11 See that top right there?

09:19:03 12 **Q** 3/19/09, where I've marked it. Highlighted it.

09:19:10 13 Right?

09:19:10 14 Do you see that?

09:19:10 15 **A** I do.

09:19:11 16 **Q** Okay. And then we can go, and it looks like 3/19/09
09:19:18 17 you've got those three pages. And then there's another
09:19:22 18 OARRS run-out.

09:19:24 19 Do you see that as well?

09:19:25 20 **A** Yes.

09:19:25 21 **Q** And this is a four-page OARRS run-out?

09:19:29 22 **A** Yes.

09:19:29 23 **Q** So this one's got a mixture of stores, including CVS
09:19:34 24 stores, right?

09:19:36 25 **A** Yes.

09:19:36 1 **Q** Now, my question to you then, ma'am, is -- we've got
09:19:45 2 those stores listed here.

09:19:46 3 My question to you is, after Walgreens refuses to fill
09:19:53 4 it this one time, what does Walgreens do with the
09:19:58 5 prescription?

09:19:58 6 **A** So if the prescription is refused to fill, we keep a
09:20:05 7 copy of it. It's refused for all Walgreens, so the
09:20:08 8 pharmacist is determining that that specific prescription at
09:20:14 9 that point in time is not -- doesn't pass Walgreens' good
09:20:19 10 faith dispensing policy, and therefore it's given back to
09:20:22 11 the patient and it is documented in our computer system that
09:20:26 12 that prescription on that day was refused.

09:20:29 13 **Q** Okay. And then what happens to the prescription?

09:20:32 14 **A** The patient takes it.

09:20:35 15 **Q** So you give it back to the patient?

09:20:36 16 **A** We do.

09:20:37 17 **Q** And your testimony is today that other Walgreens
09:20:44 18 stores would then refuse to fill the same one?

09:20:48 19 **A** That is the way the policy is written, yes.

09:20:50 20 **Q** In 2009?

09:20:53 21 **A** I don't know the answer to that, no, because my policy
09:20:55 22 was -- started at the end of 2012.

09:20:57 23 **Q** So this is 2009?

09:21:01 24 **A** Correct.

09:21:01 25 **Q** So it's possible that that prescription was taken to

09:21:04 1 another Walgreens store and filled then?

09:21:06 2 **A** It is possible.

09:21:07 3 **Q** That's a problem, isn't it?

09:21:13 4 **A** The pharmacists -- their responsibility is to take
09:21:16 5 that prescription on each merit. When we put that policy in
09:21:21 6 place, the point of the policy was to create consistency and
09:21:26 7 not have the pharmacists go through the work if one
09:21:29 8 pharmacist already chose to refuse it.

09:21:31 9 **Q** But I'm looking at this. How does another -- why was
09:21:37 10 this refused?

09:21:38 11 **A** I don't know the information to that.

09:21:41 12 **Q** Well, when you testified that these were refused for
09:21:44 13 proper reasons, there's nothing in here that even remotely
09:21:49 14 tells anyone why it's refused, is there?

09:21:52 15 MS. SWIFT: Objection. Mischaracterizes.

09:21:53 16 THE COURT: Overruled.

09:21:55 17 **A** I don't know why it's -- I don't know if that
09:21:57 18 information was redacted. I don't know the reason.

09:21:59 19 **Q** Well, I mean, look what was redacted.

09:22:03 20 The name. You've got to figure that's probably not
09:22:07 21 the reason because y'all were filling a bunch of those with
09:22:10 22 the fellow having the same name, right, or lady?

09:22:13 23 MS. SWIFT: Objection.

09:22:13 24 THE COURT: Overruled.

09:22:17 25 **A** Right.

09:22:17 1 **Q** I mean, this whole "Redacted-confidential PHI," that
09:22:23 2 means personal health information, right?
09:22:24 3 **A** Correct.
09:22:25 4 **Q** Primary phone number, birthday, address, and ZIP code.
09:22:29 5 Now, y'all kept all of that data, right?
09:22:33 6 **A** Yes.
09:22:33 7 **Q** You just redacted it for this sheet to come into
09:22:37 8 court, fair?
09:22:37 9 **A** Fair.
09:22:38 10 **Q** And then the third-party plan, that's insurance
09:22:44 11 information. That wouldn't be a reason to reject, would it?
09:22:46 12 **A** It would depend if there was a third-party reject when
09:22:49 13 they were trying to process it.
09:22:50 14 **Q** Good point. So maybe the insurance just didn't pay
09:22:53 15 this one time, and so y'all rejected it for that reason?
09:22:56 16 **A** Or they rejected for another reason, not payment.
09:22:59 17 **Q** But, ma'am, I'm looking through here, and unless
09:23:03 18 you're telling me to look at another page, there's nothing
09:23:05 19 in here that's going to tell anyone why this was rejected,
09:23:10 20 is there?
09:23:11 21 **A** But what might be a red flag to you may not be a red
09:23:15 22 flag to another pharmacist.
09:23:18 23 **Q** That wasn't my question, ma'am. Can you answer my
09:23:20 24 question, please?
09:23:20 25 **A** There's nothing on here that I can see from these

09:23:23 1 papers that will tell you why this prescription was refused.

09:23:25 2 **Q** And one thing we do know is Walgreens sure did fill a
09:23:30 3 lot of prescriptions for this person over the years, right?

09:23:33 4 **A** If you look at the dates, they were filled on a
09:23:36 5 monthly cadence, and there were multiple prescriptions
09:23:40 6 filled.

09:23:40 7 **Q** Now, in regards to this, without nitpicking each
09:23:54 8 prescription -- which, by the way, did you really look at
09:23:58 9 these carefully before you said they're filled on a monthly
09:24:02 10 cadence?

09:24:02 11 **A** I was glancing through them at a high level, yes.

09:24:06 12 **Q** Okay. So, like, Lorazepam, you see that?

09:24:12 13 **A** Yes.

09:24:12 14 **Q** Two 30-day doses filled 10 days apart?

09:24:18 15 **A** I see that.

09:24:19 16 **Q** One at Walgreens, one at Rite Aid?

09:24:20 17 **A** Yes.

09:24:21 18 **Q** And yet not only are those two 30-day doses filled 10
09:24:26 19 days apart, but just 19 -- or nine days later another one
09:24:30 20 gets filled at another Walgreens for 30 more days?

09:24:33 21 **A** It was the same Walgreens, but yes.

09:24:35 22 **Q** The same Walgreens filled two 30-day prescriptions
09:24:39 23 within nine days of each other?

09:24:40 24 **A** It is possible. They would be having a conversation
09:24:44 25 with the patient and determining whether or not there was a

09:24:47 1 legitimate reason as to why they needed it.

09:24:49 2 Q It's possible. It's also possible they were messing
09:24:51 3 up, isn't it?

09:24:58 4 A I was not the pharmacist there looking at it. I
09:25:00 5 cannot answer that question.

09:25:01 6 Q Well, you answered the earlier one and volunteered it
09:25:04 7 is possible that the pharmacist was talking to them.

09:25:05 8 You can't answer that either. You were any the
09:25:07 9 pharmacist filling it, right?

09:25:08 10 A I wasn't, correct.

09:25:09 11 Q All right. So we'll leave guessing where it belongs,
09:25:13 12 but let's look at what we don't have to guess at.

09:25:15 13 We don't have to guess that you got within 20 days of
09:25:22 14 each other at Walgreens and a Rite Aid you've got 90 days of
09:25:30 15 prescriptions filled. Right?

09:25:32 16 A Yes.

09:25:32 17 Q If we were to look through this box -- let's do it
09:25:51 18 this way.

09:25:51 19 Have you bothered to check to see even some of the
09:26:02 20 prescriptions that were dispensed?

09:26:07 21 A I have not looked at all the prescriptions that were
09:26:10 22 filled. Maybe one or two, but I have not looked at them
09:26:13 23 all.

09:26:13 24 Q You know Carmen Catizone, right?

09:26:15 25 A I do. I know who he is.

09:26:18 1 **Q** Did you ever read his expert report in this case?

09:26:21 2 **A** Not in this case, no.

09:26:22 3 **Q** He had a chance to look at all the prescriptions that

09:26:30 4 had red flags, that were selected out of a group, so it was

09:26:35 5 a model group, about 2,000 Walgreens prescriptions that were

09:26:39 6 randomly selected.

09:26:42 7 Did you know about that?

09:26:43 8 **A** No.

09:26:43 9 **Q** And he said it looked like 90 percent of those

09:26:47 10 prescriptions did not have adequate documentation.

09:26:49 11 Did you do any such check to see if your people were

09:26:53 12 adequately documenting these?

09:26:54 13 **A** I did not check those prescriptions that he looked at,

09:26:56 14 no.

09:27:00 15 **Q** So, for example, Plaintiffs' Exhibit 23678 --

09:27:07 16 MR. LANIER: If we could pass that out,

09:27:09 17 please, 23678.

09:27:25 18 **Q** While they are corralling 23678, oxycodone 10

09:27:36 19 milligram immediate release tablets, right? You know what

09:27:41 20 those are, right?

09:27:42 21 **A** I do.

09:27:42 22 **Q** They are a controlled substance, aren't they?

09:27:44 23 **A** They are.

09:27:45 24 **Q** They are part of the targeted drugs, aren't they?

09:27:47 25 **A** Yes.

09:27:48 1 Q And in -- all right, let's see if I can get a copy of
09:28:07 2 23678 given to you and counsel.

09:28:29 3 MR. LANIER: 23678, please, Rachel --

09:28:35 4 Ms. Lanier.

09:28:36 5 Sorry, Judge.

09:28:48 6 Q Ma'am, we're going to keep moving in the interests of
09:28:50 7 time, and I'm going to come back to that, so put a pin in
09:28:53 8 it, okay?

09:28:54 9 What I'll do instead is the jury heard about a
09:29:18 10 gentleman named Douglas Winland.

09:29:24 11 MS. SWIFT: Your Honor, can we go to side bar,
09:29:26 12 please?

09:29:27 13 THE COURT: Okay.

09:29:28 14 (At side bar at 9:29 a.m.)

09:29:45 15 MS. SWIFT: Your Honor, I assume where
09:29:47 16 Mr. Lanier is going as to try to ask Ms. Polster about the
09:29:51 17 OARRS report in the Winland investigation file. She's never
09:29:54 18 seen it, first.

09:29:55 19 Second, when this came up in her direct, as soon as
09:30:01 20 Mr. Lanier asked for a side bar on the original OARRS
09:30:05 21 report, you gave me a choice whether I could keep going with
09:30:09 22 it and ask questions about it or not, and I chose not to.
09:30:12 23 It is not appropriate for him to get into with her an OARRS
09:30:16 24 report and an investigation file from law enforcement that
09:30:18 25 she has never seen and no Walgreens person has ever seen.

09:30:21 1 MR. LANIER: Your Honor, hanging out there
09:30:24 2 right now is a box of refusals to fill that this witness
09:30:30 3 testified she had put together for this case, which --

09:30:34 4 MS. SWIFT: She did not testify to that.

09:30:35 5 THE COURT: Well, first of all, I don't know
09:30:37 6 what these are going to be offered or not. I mean,
09:30:42 7 Ms. Swift, are you planning to offer this box? I mean, as
09:30:47 8 evidence?

09:30:47 9 MS. SWIFT: I think it's going to depend on
09:30:49 10 how the rest of the exam goes, Your Honor.

09:30:50 11 THE COURT: I don't think they can come in
09:30:51 12 through her.

09:30:53 13 MS. SWIFT: I'm sorry, I didn't hear what you
09:30:54 14 said, Judge.

09:30:54 15 THE COURT: I don't think you can admit them
09:30:55 16 through her unless she's -- I mean -- well, all right,
09:31:04 17 Mr. Lanier, what questions are you going to ask this witness
09:31:05 18 about Winland?

09:31:07 19 MR. LANIER: So my argument in this, Your
09:31:10 20 Honor --

09:31:10 21 THE COURT: No, I just want to know what
09:31:11 22 questions you plan to ask her.

09:31:13 23 MR. LANIER: Okay. The question that I would
09:31:14 24 say is, first, you did not go through all of the ones that
09:31:19 25 were filled. You did not look --

09:31:22 1 THE COURT: You already said that.

09:31:24 2 MS. SWIFT: You already said that.

09:31:24 3 MR. LANIER: -- at Doug Winland. We have

09:31:30 4 heard about him. If you had looked at his OARRS report, you

09:31:33 5 would have seen the following, and do you think that that

09:31:36 6 was good faith dispensing, which is what she's testified all

09:31:39 7 of these counties have done and all of these stores have

09:31:42 8 done.

09:31:43 9 MS. SWIFT: Your Honor, if I'm not mistaken,

09:31:46 10 the Winland OARRS report is from 2008.

09:31:50 11 MR. LANIER: 2009 and 2010, the same date as

09:31:55 12 the one that I've just pulled out of her box.

09:31:59 13 MS. SWIFT: Regardless, it's a law enforcement

09:32:01 14 OARRS report in a law enforcement investigation.

09:32:04 15 MR. LANIER: There's no difference.

09:32:05 16 MS. SWIFT: There is a very large difference

09:32:08 17 in what law enforcement has access to.

09:32:09 18 MR. LANIER: No.

09:32:10 19 THE COURT: Everyone who looks at OARRS has

09:32:12 20 access to what prescriptions were filled.

09:32:14 21 MS. SWIFT: That's not accurate, Your Honor.

09:32:16 22 THE COURT: Well, that's the testimony.

09:32:18 23 MR. LANIER: That's the testimony and that's

09:32:19 24 right.

09:32:19 25 MS. SWIFT: The pharmacist has access to what

09:32:21 1 the -- what is there for the patient that is in front of
09:32:24 2 them.

09:32:25 3 THE COURT: Well, that's the only read for one
09:32:30 4 patient.

09:32:30 5 MR. LANIER: Yeah. It's the exact same OARRS
09:32:32 6 report, Your Honor. It looks the exact same one that was in
09:32:34 7 the box that I've just looked at, it's the same time period,
09:32:37 8 the same year. And it shows a different story than the
09:32:42 9 witness has sworn to under oath.

09:32:44 10 THE COURT: Well, she --

09:32:47 11 MS. SWIFT: Your Honor, again, I withdrew the
09:32:49 12 questions about the OARRS report because --

09:32:51 13 THE COURT: Mr. Lanier, you can ask her if she
09:32:55 14 knows anything about Winland. If she does, you can keep
09:32:57 15 going. But we're not just going to -- if she says she knows
09:33:01 16 nothing about it and hasn't looked at it, then that's the
09:33:03 17 end of it. You've established your point, all right? If
09:33:08 18 she knows something about it, you can certainly question her
09:33:10 19 about it. If she knows nothing about it, you've established
09:33:13 20 your point that she didn't even look at Winland.

09:33:16 21 MR. LANIER: Okay.

09:33:23 22 (In open court at 9:33 a.m.)

09:33:39 23 MR. LANIER: May I continue, Your Honor?

09:33:42 24 THE COURT: Yes.

09:33:43 25 MR. LANIER: Thank you.

09:33:43 1 BY MR. LANIER:

09:33:44 2 Q Ma'am?

09:33:45 3 A Yes.

09:33:45 4 Q In your preparation for this case, when you looked at
09:33:51 5 the refusals to fill box, did anybody at any time at all
09:33:57 6 talk to you about Doug Winland and the fills that were done
09:34:03 7 by Walgreens on his OARRS report?

09:34:07 8 A No.

09:34:07 9 Q You don't know anything about that at all?

09:34:10 10 A No.

09:34:11 11 Q Nobody -- okay. Nobody brought it to your attention
09:34:16 12 even without using his name about someone in 2009?

09:34:20 13 MS. SWIFT: Objection, Your Honor.

09:34:23 14 THE COURT: Overruled.

09:34:23 15 A No.

09:34:24 16 Q And I think we're ready to pass out -- almost ready to
09:34:33 17 pass out the document.

09:34:43 18 While I'm getting that ready to go, let's look at some
09:34:48 19 of the juror questions that we didn't get a chance to get to
09:34:54 20 yesterday. Okay?

09:34:54 21 A Okay.

09:34:54 22 Q Here's one.

09:34:58 23 "Are any of the stores involved in this case part of
09:35:02 24 the 2,407 stores audited for completion of good faith
09:35:10 25 dispensing checklist?"

09:35:11 1 Are you able to answer that question?

09:35:13 2 **A** I do not know. I do know that we had our loss
09:35:20 3 prevention managers in every area of the country go into
09:35:25 4 random stores, but I do not know which stores that were
09:35:30 5 done.

09:35:31 6 **Q** The results were on an Excel spreadsheet, correct?

09:35:37 7 **A** You know, I don't know. I saw the executive summary,
09:35:41 8 but I didn't see the raw data.

09:35:42 9 **Q** I'll show you the raw data marked as Plaintiffs'
09:35:47 10 Exhibit 22945, pulling out the stores that were in this
09:35:53 11 region.

09:35:53 12 Does this look consistent with what you think that raw
09:35:59 13 data would look like?

09:36:00 14 **A** I don't know. I can't read that.

09:36:01 15 **Q** Okay. So I couldn't either so we can blow it up?

09:36:07 16 MS. SWIFT: Objection. Do you have a copy for
09:36:09 17 the witness so she can look at it?

09:36:11 18 THE WITNESS: Here it is.

09:36:13 19 MS. SWIFT: Thank you.

09:36:19 20 **Q** Do you see the four stores that I've isolated out in
09:36:22 21 the spreadsheet?

09:36:22 22 **A** Yes, I do.

09:36:23 23 MS. SWIFT: Objection. What is this document?

09:36:27 24 MR. LANIER: This is the data -- Your Honor,
09:36:31 25 this is the Excel data of the BCI internal audit, isolating

09:36:41 1 out for the four stores that were looked at in this region.

09:36:46 2 THE COURT: Well, why don't you ask her
09:36:48 3 recognizes those store numbers.

09:36:52 4 Q Do you recognize these store numbers, ma'am?

09:36:55 5 A Not off the top of my head I do not.

09:36:56 6 MS. SWIFT: Your Honor, I don't believe this
09:36:58 7 document has been disclosed. It doesn't have a Bates number
09:37:02 8 on it. I don't know what it is.

09:37:03 9 THE COURT: I don't know either.

09:37:04 10 MR. LANIER: The Bates number is -- this is a
09:37:09 11 copy from the production that it came from. It's an entire
09:37:11 12 database Excel spreadsheet, Your Honor, that's really long.

09:37:16 13 THE COURT: Go on the headphones.

09:37:19 14 (At side bar at 9:37 a.m.)

09:37:31 15 THE COURT: All right. Mr. Lanier, I don't
09:37:33 16 have any doubt that this document is what you say it is, but
09:37:37 17 if the witness has no clue, I don't think you can just keep
09:37:41 18 examining her on it. If she -- if you can give her
09:37:44 19 something and she can identify the store number as store
09:37:49 20 numbers that are involved in this case, fine, but otherwise
09:37:52 21 it's just your testimony. I don't think it's appropriate.

09:37:55 22 MS. SWIFT: Your Honor, my concern is that
09:37:56 23 this is something that the plaintiffs' lawyers created.
09:37:59 24 There's a column that says CT 3 store.

09:38:02 25 THE COURT: That's okay -- it's okay who

09:38:08 1 created it, but unless the witness from her knowledge can
09:38:11 2 say that it's accurate, authentic, what it is, I'm not -- I
09:38:14 3 don't think it's fair examination.

09:38:15 4 MR. LANIER: I understand, Your Honor.

09:38:16 5 THE COURT: If she's able to do it by looking
09:38:17 6 at other things, that's fine.

09:38:19 7 MR. LANIER: My only concern, Your Honor, is I
09:38:22 8 don't want, then, Ms. Swift to get up and start asking
09:38:25 9 questions about this juror question if this witness is not
09:38:29 10 able to answer them when I ask them.

09:38:31 11 MS. SWIFT: Your Honor, if Mr. Lanier would
09:38:32 12 just ask the juror questions and then move on, we wouldn't
09:38:38 13 have a problem with that.

09:38:38 14 MR. LANIER: I started with that.

09:38:39 15 MS. SWIFT: That's not what he's doing now.

09:38:41 16 MR. LANIER: No, my first question was very
09:38:43 17 simply, did you -- you know, do you know the answer to this
09:38:48 18 juror question, I read it. And she said, I don't know.

09:38:51 19 MS. SWIFT: And then that should have been it.
09:38:52 20 If you're just going to ask the juror questions and move on,
09:38:55 21 we don't have a problem with that. This is something that
09:38:57 22 was never disclosed. It looks like the lawyers created it.
09:38:59 23 I don't know what this is.

09:39:00 24 MR. LANIER: No, it's all part of
09:39:02 25 plaintiffs --

09:39:02 1 THE COURT: Hold it. All right. He asked the
09:39:03 2 question, that's fine, but he's entitled to ask other
09:39:05 3 questions, Ms. Swift, and he's entitled to take data and
09:39:12 4 create exhibits and it's okay to use them. But the witness
09:39:15 5 has to be able to say, yeah, I recognize this, I know
09:39:18 6 something about it, this is accurate. Otherwise it's not
09:39:23 7 proper.

09:39:23 8 MR. LANIER: Got it.

09:39:23 9 THE COURT: It's just not proper because then
09:39:25 10 it's Mr. Lanier testifying.

09:39:26 11 MR. LANIER: I understand, Your Honor, and
09:39:27 12 I'll handle it accordingly.

09:39:28 13 THE COURT: All right. Thank you.

09:39:30 14 (In open court at 9:39 a.m.)

09:39:44 15 BY MR. LANIER:

09:39:44 16 Q So, ma'am, do you recognize this spreadsheet as a fair
09:39:54 17 rendering of the Excel spreadsheet that would have been
09:39:59 18 generated as part of the data field, looking at the stores
09:40:05 19 to see what and where their numbers lie on the various
09:40:08 20 questions?

09:40:10 21 Do you recognize it?

09:40:11 22 A I've never seen one of these spreadsheets before.
09:40:14 23 I've never seen the raw data.

09:40:16 24 Q Okay. So when you were testifying yesterday about
09:40:19 25 this and how you felt good about the data, nobody even

09:40:24 1 showed you the data?

09:40:26 2 **A** I did not see the individual data. I saw the
09:40:30 3 aggregate data for the -- through the executive summary.

09:40:33 4 **Q** So you didn't bother to look to see if the four stores
09:40:36 5 that were in these two counties, what their data was?

09:40:40 6 **A** I did not.

09:40:40 7 **Q** Let's -- I think Ms. Lanier tells me we are ready.

09:40:58 8 MR. LANIER: Plaintiffs' 23678, if that could
09:41:01 9 be passed out, please.

09:41:06 10 **Q** Do you have 23678 in front of you?

09:41:09 11 **A** I do.

09:41:09 12 **Q** This is another Walgreens hard copy report.

09:41:14 13 You're familiar with these, right?

09:41:15 14 **A** Yes.

09:41:15 15 **Q** This is one that has the good faith dispensing
09:41:22 16 checklist attached, correct?

09:41:24 17 **A** Yes.

09:41:24 18 **Q** Now, "valid Government ID, yes," right, or "known to
09:41:38 19 pharmacy staff," correct?

09:41:39 20 **A** Yes.

09:41:39 21 **Q** "No prior good faith refusal for this exact
09:41:45 22 prescription in patient comments. If so, prescription must
09:41:52 23 not be dispensed."

09:41:53 24 Look at the answer on that. Says "no," doesn't it?

09:42:00 25 **A** Yes.

09:42:00 1 So let me clarify what this exact prescription is.
09:42:03 2 It's the prescription written for that specific date. So if
09:42:08 3 a patient comes into a Walgreens Pharmacy and fills a
09:42:12 4 prescription for today's date and it's refused, the
09:42:16 5 comments, per the policy, put into the patient's profile is
09:42:20 6 prescription for whatever the controlled substance is, on
09:42:26 7 today's date was refused by that pharmacist.

09:42:28 8 If they take that specific prescription into another
09:42:31 9 Walgreens, that prescription should not be filled.

09:42:36 10 **Q** Yeah. So "Party [sic] does not appear intoxicated or
09:42:42 11 under the influence of illicit drugs."

09:42:45 12 That should be checked yes if you're going to dispense
09:42:48 13 it, shouldn't it?

09:42:49 14 **A** No. It's asking for the pharmacist's interpretation
09:42:53 15 of the patient taking the medication. If the patient is not
09:42:59 16 coming in and intoxicated and all of that, that does not --
09:43:05 17 I mean, a patient who is severely under the influence is
09:43:10 18 going to behave in a different way than a chronic pain
09:43:15 19 patient who has taken that medication before.

09:43:18 20 **Q** Ma'am, all I'm saying is according to your
09:43:20 21 checklist, this is a patient that evidently does appear
09:43:24 22 intoxicated or under the influence of illicit drugs, true?

09:43:30 23 **A** No, you don't know that and neither do I.

09:43:32 24 **Q** Well, that's what they checked. They checked no,
09:43:36 25 didn't they?

09:43:36 1 **A** "Patient does not appear intoxicated or under the
09:43:41 2 influence of illicit drugs."

09:43:43 3 **Q** Right. They didn't say yes, that's true, patient does
09:43:45 4 not appear. They said, no, that's not true.

09:43:48 5 Do you see that?

09:43:48 6 **A** I see that.

09:43:49 7 **Q** I mean, you've looked at hundreds, thousands of these
09:43:53 8 forms. You know that that "no" there means they appear
09:43:57 9 intoxicated or under the influence of drugs, doesn't it?

09:44:02 10 **A** That's what she marked, yes.

09:44:04 11 **Q** Yes. And then she dispenses the prescription anyway,
09:44:07 12 right?

09:44:07 13 **A** Yes.

09:44:08 14 **Q** Okay. So you've got a form here, and the form says,
09:44:17 15 "No on a prior good faith refusal for this exact
09:44:21 16 prescription," and it says no for "appears intoxicated," and
09:44:28 17 it gets dispensed anyway, doesn't it?

09:44:30 18 **A** I see that.

09:44:31 19 **Q** Both of those before it's dispensed should be checked
09:44:36 20 "yes," shouldn't they?

09:44:38 21 **A** Correct, I see what you're saying, yes.

09:44:39 22 **Q** Yeah. What I'm saying is is this one went out and it
09:44:44 23 sure shouldn't have based on this sheet at least, right?

09:44:45 24 **A** Well, we don't know that, but, yes, based on this
09:44:47 25 sheet the way they marked it --

09:44:49 1 **Q** Yeah, it looks like this was -- this exact
09:44:51 2 prescription was already refused, and the patient appears
09:44:55 3 intoxicated and under the influence of illicit drugs, and
09:45:00 4 yet it goes out, right?

09:45:00 5 **A** It was dispensed.

09:45:02 6 **Q** And so we're clear, we're talking about this is a
09:45:07 7 local prescription in this county -- these counties in this
09:45:10 8 case, right?

09:45:11 9 **A** That's what you're telling me, yes.

09:45:12 10 **Q** Well, I'm thinking that's what I'm told.

09:45:16 11 The address for the plaintiff is Girard, Ohio.

09:45:21 12 Do you see that?

09:45:22 13 **A** That's the prescriber, I think.

09:45:26 14 **Q** Oh, you're right, the address of the prescriber is
09:45:32 15 Girard, Ohio, correct?

09:45:35 16 **A** Yes.

09:45:35 17 **Q** We don't have the specific data on the location of the
09:45:38 18 plaintiffs, right? I mean patients. Right?

09:45:45 19 **A** No, you don't. It's been redacted.

09:45:46 20 **Q** But, look, we do have the Walgreens store?

09:45:48 21 **A** Yes.

09:45:49 22 **Q** So it's one in -- I believe that's Trumbull County,
09:45:53 23 isn't it?

09:45:53 24 **A** You would have to tell me.

09:46:00 25 **Q** So if we start looking not at the four and a half per

09:46:03 1 year that were refused to fill but instead looking at the
09:46:06 2 prescriptions that were filled, we might get better
09:46:10 3 information of whether the company's pharmacists were
09:46:14 4 dispensing things improperly, fair?

09:46:17 5 **A** I don't agree with you. And the reason why I don't
09:46:22 6 agree with you is because the pharmacist on duty has to take
09:46:25 7 into the situation what's happening with the patient, what's
09:46:29 8 happening at that point in time with the patient,
09:46:32 9 understanding what their medical history is, understanding
09:46:35 10 why they're a chronic pain patient. It's very gray.

09:46:40 11 I cannot answer that question yes or no.

09:46:41 12 **Q** Well, but, ma'am, the whole reason you've got this
09:46:44 13 form is to document --

09:46:48 14 **A** One of the reasons why I have that form is to create
09:46:51 15 consistency.

09:46:52 16 Can I tell you what was happening in that particular
09:46:54 17 instance? Can I tell you whether or not that pharmacist
09:46:57 18 made a mistake? I don't know. Maybe they did not document
09:47:02 19 it correctly. Human error happens all the time.

09:47:07 20 **Q** So are you saying that they accidentally put "no"?

09:47:15 21 **A** I'm saying it is possible. I don't know. I was not
09:47:16 22 there.

09:47:17 23 **Q** But, ma'am, don't y'all train them?

09:47:22 24 **A** We train our pharmacists, yes.

09:47:25 25 **Q** And don't you trust them?

09:47:26 1 **A** Yes, we do.

09:47:27 2 **Q** Don't you trust that this pharmacist was accurate?

09:47:29 3 **A** Our pharmacists filled the prescription, and the

09:47:33 4 responsibility of filling the prescription is through her

09:47:35 5 corresponding responsibility.

09:47:37 6 **Q** Please answer my question.

09:47:39 7 **A** I trust our pharmacists, yes.

09:47:40 8 **Q** Don't you trust that this pharmacist was accurate?

09:47:44 9 That was my question.

09:47:44 10 **A** I trust that she used her good judgment when she

09:47:48 11 filled the prescription.

09:47:49 12 **Q** And it may have been a he. You don't know. Y'all

09:47:51 13 have male pharmacists as well, right?

09:47:54 14 **A** I don't know, I guess I thought that name said Karen,

09:47:57 15 but I don't know.

09:47:59 16 **Q** May be.

09:48:00 17 **A** I don't know.

09:48:00 18 **Q** I don't know. But how people -- yeah.

09:48:06 19 Okay. And again, you didn't go through and look at

09:48:11 20 such paperwork for these stores in these counties in this

09:48:17 21 case, true?

09:48:18 22 **A** True.

09:48:18 23 **Q** More juror questions, please.

09:48:20 24 "If the area/district/store is not 100 percent in

09:48:25 25 following policy/procedure, what is an acceptable amount?"

09:48:30 1 **A** So, yeah, fair question. So what would happen is is
09:48:35 2 the leader would go into the store, they would begin looking
09:48:38 3 through the files for compliance. If they don't see
09:48:44 4 documentation that we're looking for per the policy, we
09:48:48 5 would -- they would begin with counseling the pharmacy
09:48:52 6 manager and the -- or the staff pharmacist and understanding
09:48:57 7 does everybody understand the policy, does everybody
09:49:00 8 understand what we're looking for.

09:49:02 9 Again, this is per policy, not legal requirement. And
09:49:07 10 they would counsel to the policy and doing that.

09:49:12 11 The repercussions of not being compliant is it starts
09:49:17 12 with a verbal warning, then it goes to a written warning, it
09:49:21 13 goes to a final written warning, and it goes to termination.
09:49:25 14 And it depends on the situation. If it's one specific
09:49:28 15 pharmacist or if it's pharmacy manager, if it's multiple
09:49:33 16 pharmacists, it would depend on the situation.

09:49:36 17 **Q** Ma'am, I want to go back and press you a little bit on
09:49:38 18 the first question.

09:49:39 19 What is an acceptable amount? I didn't hear your
09:49:41 20 answer.

09:49:41 21 **A** I didn't answer that. I can't answer an acceptable
09:49:46 22 amount until I understand the entire situation of what the
09:49:48 23 leader would need to be taking into account.

09:49:51 24 **Q** Do you think someone caught this and did anything
09:49:54 25 about it?

09:49:55 1 **A** I don't know the answer to that.

09:49:56 2 **Q** "Prior to 2012, was the information available if the

09:50:06 3 patient has or had insurance?"

09:50:10 4 **A** Yes.

09:50:12 5 **Q** "How many prescriptions did you review from Lake and

09:50:16 6 Trumbull County?"

09:50:17 7 **A** Boy, a handful of them.

09:50:19 8 **Q** A handful, as in three, four, five?

09:50:26 9 **A** Probably. I looked through the box. I did not look

09:50:32 10 through each one of them.

09:50:32 11 **Q** And those are just the refusals to fill. How many of

09:50:36 12 them that went out did you look at?

09:50:39 13 **A** I don't know the answer to that.

09:50:40 14 **Q** Well, I mean, more or less than five?

09:50:47 15 **A** I really -- I truly do not know.

09:50:49 16 **Q** I just showed you one.

09:50:51 17 **A** You showed me one.

09:50:52 18 **Q** I'll show you a bunch more in a minute if the Court

09:50:55 19 allows it.

09:50:55 20 But my question to you is, how many did you look at?

09:50:59 21 Did you look at any? Let me ask that.

09:51:01 22 **A** I did look at a few, yes, but I can't give you the

09:51:05 23 exact number and it's been a while.

09:51:06 24 **Q** Can you tell if you looked at some from each store?

09:51:09 25 **A** Not from each store, no.

09:51:11 1 **Q** Take back kiosks, you testified about those. Do you
09:51:17 2 have them in the Lake and Trumbull County stores?

09:51:20 3 **A** I'd have to check. I don't know if I have any. I'm
09:51:23 4 happy to look on that.

09:51:24 5 In terms of why or why not, we determined when we
09:51:31 6 first opened -- or when we first did the program, we tried
09:51:34 7 to put it in all of our 24-hour stores, and then we spread
09:51:38 8 them sporadically throughout the country. And some stores
09:51:44 9 are not 24 hours and some stores that were 24 hours changed
09:51:48 10 24 hours.

09:51:49 11 I would need to check on the Lake and Trumbull County.

09:51:51 12 **Q** Next question. "It seems as though there isn't a
09:51:56 13 standardized location where red flags" -- oh, I may have
09:52:00 14 asked this yesterday.

09:52:01 15 **A** You did.

09:52:01 16 **Q** You've been spared.

09:52:08 17 Now, I asked you yesterday two questions on this
09:52:14 18 sheet, but I did not ask you the bottom two questions, and I
09:52:17 19 didn't want to miss that.

09:52:18 20 So question number 3, "Is it required for refusal
09:52:23 21 comments to be entered in more than one field? Or just the
09:52:29 22 target drug good faith dispensing comments?"

09:52:33 23 **A** No, just one field. They can do it in different
09:52:36 24 fields but just one field.

09:52:38 25 **Q** All right. So can do it in different, but one field

09:52:42 1 is the designated field?

09:52:43 2 **A** For the policy, yes, for that --

09:52:46 3 **Q** And that's the designated field where you and I talked
09:52:48 4 about where you okayed deletions from prior prescriptions,
09:52:51 5 right?

09:52:51 6 **A** Prior prescriptions, yes.

09:52:54 7 **Q** "Are the hard copies in the refusal folder shared with
09:52:58 8 all Walgreens if the comment was deleted?"

09:53:02 9 **A** No. They are -- now, I do know that pharmacists do
09:53:06 10 speak to each other, both to the competition as well as to,
09:53:12 11 you know, Walgreens stores down the street. I did it in
09:53:15 12 practice. My field pharmacists did it in practice. But
09:53:19 13 they are not posted anywhere or shared electronically, no.

09:53:24 14 **Q** I am reminded of Mr. Joyce testifying on one script he
09:53:43 15 looked at from Dr. Veres where the question was did you
09:53:48 16 check with other pharmacies, and his reply was I didn't need
09:53:51 17 to. I already know about Dr. Veres.

09:53:57 18 Do you train your pharmacists to always call other
09:54:02 19 pharmacists when they have a question?

09:54:04 20 **A** The word "always" does not come into account, but it
09:54:09 21 is part of the practice of pharmacy. They do sometimes
09:54:12 22 share information with their pharmacists, competition
09:54:19 23 friends across the street or with pharmacists at another
09:54:22 24 Walgreens. It is a common practice that pharmacists do.

09:54:26 25 **Q** So to be clear, though, you have no clue --

09:54:30 1 MS. SWIFT: Objection. She wasn't finished
09:54:31 2 with her answer, I don't think.

09:54:32 3 MR. LANIER: I'm sorry. I thought she was.

09:54:34 4 Q Go ahead, ma'am. You said it's a common practice that
09:54:37 5 pharmacists do.

09:54:37 6 A Right, in talking to their peers and talking to the
09:54:41 7 pharmacists across the street, the competition, about either
09:54:46 8 prescribers, prescribing patterns, patients, et cetera.

09:54:53 9 Q And did you speak to the pharmacists in the stores in
09:54:55 10 these counties about their habits?

09:54:57 11 A I did not.

09:54:58 12 Q Do you know the pharmacists in these stores?

09:55:01 13 A I do not.

09:55:02 14 Q Do you know what their habit or practice is?

09:55:05 15 A I do not.

09:55:06 16 Q Do you know how frequently they do that?

09:55:09 17 A No.

09:55:10 18 Q Do you know how difficult they find it if they're
09:55:13 19 trying to get something done under 15 minutes if we go back
09:55:17 20 in time ten years?

09:55:23 21 MS. SWIFT: Objection. Could we have a side
09:55:29 22 bar, please, sir?

09:55:29 23 (At side bar at 9:55 a.m.)

09:55:39 24 MS. SWIFT: Your Honor, I was preemptive. My
09:55:43 25 objection was I thought Mr. Lanier was about to go into the

09:55:47 1 workload study that has been excluded from this case. If
09:55:50 2 he's not going to do that, I just wanted to preemptively --
09:55:54 3 MR. LANIER: Well, I'm not going to do that.
09:55:55 4 THE COURT: Okay.
09:55:57 5 MS. SWIFT: Thank you.
09:56:04 6 (In open court at 9:56 a.m.)
09:56:15 7 BY MR. LANIER:
09:56:16 8 Q So, ma'am, I wanted to go back in time. Let's go back
09:56:19 9 to 2009, 2010. They're trying to get a prescription filled
09:56:26 10 in 15 minutes. Not even the opiate prescription, another
09:56:29 11 one that comes in. And they're taking time on the opiate
09:56:32 12 prescription to call or not call and do that kind of work.
09:56:42 13 Have you all done any kind of internal audit or study
09:56:45 14 to see how often the pharmacists call?
09:56:47 15 A How often the pharmacists call what?
09:56:50 16 Q Other pharmacists.
09:56:51 17 A Not that I'm aware of.
09:56:52 18 Q All right. Next juror question. "Where would a
09:56:58 19 refusal folder end up if a store had closed?"
09:57:02 20 Let's start there and then we'll read the next
09:57:05 21 question.
09:57:06 22 A Sure. So if a store closes, all of the prescription
09:57:09 23 records go to the store that's nearby, the next store. So
09:57:12 24 that would follow, and it would be at that new store.
09:57:17 25 Generally, the patients are made aware that your

09:57:20 1 prescription files have been transferred to this next store,
09:57:25 2 and all those paper records, everything goes to that other
09:57:29 3 location.

09:57:31 4 **Q** Okay. And then "How would a pharmacist get access to
09:57:37 5 that information," would those just be paper files?

09:57:39 6 **A** Yes.

09:57:39 7 **Q** So the paper files themselves are sent over?

09:57:42 8 **A** Correct.

09:57:42 9 **Q** And then at some point they go to Iron Mountain, don't
09:57:47 10 they?

09:57:47 11 **A** You know, I'll be honest with you, I don't --

09:57:52 12 **Q** I hope.

09:57:53 13 **A** -- if the refusal folder goes to Iron Mountain. And
09:57:58 14 the reason is is that that file folder is not generally kept
09:58:03 15 with the actual filled hard copy prescriptions in the file
09:58:08 16 drawer. It's usually kept at a different section in the
09:58:11 17 stores. And the pharmacists will box up, or the technician,
09:58:17 18 whatever, will box up old prescription files from years
09:58:20 19 previous. They're in like this but big boxes. And those go
09:58:26 20 to Iron Mountain, but I don't know if they also send the old
09:58:31 21 refusal folders.

09:58:32 22 **Q** All right. Ms. Polster, let's move past good faith
09:58:38 23 dispensing and the training and let's talk about the
09:58:41 24 computers for a little bit, okay?

09:58:42 25 **A** Sure.

09:58:42 1 **Q** You talked about IntercomPlus yesterday, and you
09:58:53 2 talked about all of the information that it has. Remember?
09:58:59 3 **A** Yes.
09:58:59 4 **Q** You went back into the early 2000s and said we've got
09:59:04 5 the patient's name and the patient's ZIP code and the
09:59:07 6 patient's diagnosis code and the drug that was prescribed
09:59:12 7 and the dosage and the doctor and all of that. Remember?
09:59:18 8 **A** Yes.
09:59:18 9 **Q** What you didn't tell the jury is the reason y'all had
09:59:23 10 that in IntercomPlus was because y'all were selling all of
09:59:26 11 that information to IMS, weren't you?
09:59:31 12 MS. SWIFT: Objection, Your Honor.
09:59:34 13 THE COURT: Sustained.
09:59:36 14 **Q** Ma'am, do you know what your company was doing selling
09:59:40 15 information?
09:59:41 16 **A** I do not.
09:59:42 17 **Q** Did your company ever tell you about the need for each
09:59:48 18 store to do due diligence in inputting this information
09:59:54 19 because it was being sold?
09:59:55 20 MS. SWIFT: Objection. This is beyond the
09:59:56 21 scope.
09:59:56 22 MR. LANIER: No, this is --
09:59:57 23 THE COURT: Overruled.
10:00:00 24 **A** There are certain elements of prescriptions and
10:00:07 25 records that are legally required for any prescription, and

10:00:13 1 so it's legally required to have that data in our computer
10:00:18 2 system when we dispense a prescription.

10:00:20 3 **Q** Yes, ma'am, that wasn't my question though.

10:00:22 4 My question was, did you know, in your job did you
10:00:28 5 know, in any of your jobs that you've held in the company,
10:00:31 6 did you know that your company was taking that data on each
10:00:34 7 patient, customer, and selling it to a third party?

10:00:40 8 **A** I did not know it was being sold, no.

10:00:41 9 **Q** Now, you also testified yesterday that the computer
10:00:53 10 system's been in place since 1984, and y'all have had
10:00:59 11 IntercomPlus in place since 1997. True?

10:01:03 12 **A** Yes.

10:01:04 13 **Q** So IntercomPlus, is this the same system that the
10:01:07 14 president wouldn't let you use for electronic refusals to
10:01:19 15 fill entries for seven years?

10:01:20 16 **A** Yes.

10:01:20 17 **Q** And you've still got that system today, but now the
10:01:22 18 system will let you do it, right?

10:01:24 19 **A** Yeah, we had -- we got the approval for the
10:01:26 20 enhancement to be filled, and what that enhancement has done
10:01:32 21 is made it very -- data more rapidly available to my team.

10:01:39 22 **Q** Okay. Next set of questions.

10:01:41 23 You got asked by Ms. Swift about the Yaeger complaint.
10:01:46 24 Do you remember that?

10:01:47 25 **A** Yes.

10:01:47 1 **Q** That's Plaintiffs' Exhibit 17156, the document she
10:01:54 2 gave you. And it's the write-up of the complaint and how it
10:01:59 3 was handled.

10:02:00 4 Do you remember this?

10:02:01 5 **A** Yes.

10:02:01 6 **Q** Did you actually read this?

10:02:04 7 **A** I did read through it, but I didn't read every single
10:02:07 8 line.

10:02:07 9 **Q** I'm sorry?

10:02:10 10 **A** I read through it, but I did not read every single
10:02:13 11 line.

10:02:13 12 **Q** So when you testified things like you did, do you know
10:02:22 13 if anybody got reprimanded for this?

10:02:23 14 **A** That was my understanding, that the store managers got
10:02:31 15 counseled. I don't know -- I'm not -- I do not have access
10:02:35 16 to HR records. These reports are held very confidential
10:02:42 17 with the compliance department and the HR department and the
10:02:47 18 employee relations department.

10:02:49 19 **Q** Well, there's a difference between being counseled and
10:02:52 20 being reprimanded, isn't there?

10:02:54 21 **A** I don't know what -- yes, there is.

10:02:56 22 **Q** And the counseling that is documented in here happens
10:03:03 23 months and months later, right?

10:03:06 24 **A** This investigation was investigated thoroughly, and it
10:03:10 25 did take time based on employee schedules and people who

10:03:14 1 were on leave, yes.

10:03:18 2 Q And in fact, there is no reprimand that's listed in
10:03:20 3 here. All there is is, oh, let's take advantage of a chance
10:03:25 4 to tell them to let the pharmacists do their job,
10:03:29 5 counseling, right?

10:03:30 6 A But you don't know that and neither do I.

10:03:32 7 Q Well, actually it says it in here, ma'am?

10:03:34 8 A It might say that, but that doesn't mean that's not
10:03:38 9 what -- that the district -- or the leadership in the area
10:03:42 10 did not do a verbal warning or something like that.

10:03:45 11 Q But, ma'am, it doesn't say that they did. All it says
10:03:48 12 is what it says, right?

10:03:49 13 A Well, I see what you're saying.

10:03:52 14 Q It says on page 9, "She had a coaching conversation."
10:04:00 15 Do you see that?

10:04:01 16 A I do.

10:04:01 17 Q You want us to believe a coaching conversation is a
10:04:06 18 reprimand?

10:04:07 19 A A coaching conversation can be used as the
10:04:12 20 documentation that they did start the path of discipline.

10:04:20 21 Q Look at what it says.

10:04:27 22 A I can't see your screen. Can you bring it down a
10:04:30 23 little bit?

10:04:30 24 Q Oh, I'm so sorry.

10:04:31 25 A Thank you.

10:04:31 1 **Q** That's my fault.

10:04:32 2 "Steps to resolve this matter with the registered

10:04:39 3 pharmacist, Mr. Yaeger."

10:04:41 4 The first step is recommended to inform the SM.

10:04:45 5 So those are store managers, right?

10:04:47 6 **A** Yes.

10:04:47 7 **Q** "In the district of their roles supporting pharmacists

10:04:50 8 with good faith dispensing regardless of possibility of

10:04:55 9 customer complaint, and that they should not be attempting

10:04:58 10 to influence the pharmacist's decision to fill

10:05:02 11 prescription."

10:05:03 12 **A** Yes.

10:05:03 13 **Q** Now, you and I agree that's good policy, isn't it?

10:05:06 14 **A** Yes, and that's what we have always said.

10:05:07 15 **Q** Well, no, ma'am, because in fairness, several years

10:05:11 16 before you told the management, maybe not on the store

10:05:14 17 manager level, a bump up, but you told them to sit down and

10:05:18 18 to go through those that aren't prescribing enough, right?

10:05:24 19 **A** You are completely taking my testimony out of context.

10:05:27 20 They were to review the refusal folders to ensure that we

10:05:31 21 have the documentation, not to question why the prescription

10:05:34 22 wasn't filled.

10:05:36 23 **Q** No, ma'am, you -- and I'm glad to pull the document

10:05:40 24 back up if you want me to.

10:05:42 25 The truth of the matter is though, what you said is

10:05:47 1 that we're going to get quarterly reports of those that
10:05:50 2 aren't filling enough, and the management needs to sit down
10:05:53 3 with the pharmacists and needs to go over this, if necessary
10:05:57 4 enroll them in education on pain management.

10:05:59 5 Do you not remember that?

10:06:00 6 **A** I didn't -- I don't remember saying in pain
10:06:03 7 management. But let me tell you why.

10:06:04 8 A pain management prescription --

10:06:06 9 **Q** Ma'am, I'm asking you simply, do you remember saying
10:06:08 10 that in the document?

10:06:09 11 **A** I remember saying that the leadership were to go in
10:06:14 12 and make -- have an understanding as to why the pharmacists
10:06:17 13 were not filling the prescriptions.

10:06:20 14 Again, they can't slough off that responsibility. The
10:06:23 15 continuing education on chronic pain medication, that is an
10:06:27 16 education that, you know, we -- pharmacists want to have.
10:06:30 17 They're starting to see more chronic pain medication
10:06:34 18 prescriptions come in. They need to understand why a
10:06:38 19 patient would need chronic pain medication.

10:06:47 20 **Q** Okay. Ma'am, let's get precise here. Here's your
10:06:49 21 document. It's Plaintiffs' 19607.

10:06:53 22 "What can I do?

10:06:56 23 "Review the refusals documented in the folder.

10:07:00 24 "Look for documentation the pharmacist used the tools
10:07:04 25 available as appropriate in making the decision to refuse,

10:07:08 1 PDMP, reviewing the patient profile, speaking with the
10:07:11 2 patient or caregiver.

10:07:13 3 "Does the documentation support the decision?

10:07:16 4 "Have a conversation with the pharmacist.

10:07:19 5 "Ask them how they will follow good faith dispensing.

10:07:23 6 "Ask how they will decide to fill a control

10:07:27 7 prescription versus refuse.

10:07:28 8 "Review specific refused scripts to better understand

10:07:33 9 if the pharmacist was acting in the best interest of the

10:07:36 10 patient and their care."

10:07:41 11 You sent businesspeople in --

10:07:43 12 **A** Yes.

10:07:43 13 **Q** -- to have a conversation to examine the decision and

10:07:46 14 decide if it was appropriate, didn't you?

10:07:47 15 **A** No, not to decide if it was appropriate, to

10:07:49 16 understand --

10:07:49 17 **Q** Ma'am, that's exactly what you said.

10:07:51 18 MS. SWIFT: Objection. She didn't finish her

10:07:52 19 answer.

10:07:53 20 **A** To understand if the pharmacists were just refusing to

10:07:58 21 fill all prescriptions or prescriptions they didn't feel

10:08:03 22 comfortable filling without the proper knowledge on how to

10:08:06 23 do it.

10:08:06 24 We had pharmacists that they're like, you know what,

10:08:09 25 I'm not going to fill this, I'm going to send it over to the

10:08:11 1 next guy, I'm going to leave it for the next person. We
10:08:15 2 want to make sure, okay, why are you refusing it? Do you
10:08:19 3 have proper documentation? Did you do your due diligence in
10:08:22 4 not filling the prescription? Do you need education or
10:08:25 5 training around filling for chronic pain patients?

10:08:30 6 A chronic pain patient is not a bad person because
10:08:34 7 they need the pain medication.

10:08:37 8 **Q** Ms. Polster, you understand you're under oath?

10:08:39 9 **A** Yes, I do.

10:08:40 10 **Q** I'd like to show you your testimony yesterday and
10:08:43 11 contrast it with what you just said today.

10:08:46 12 Yesterday I asked you this question: "You sent the
10:08:53 13 businesspeople in to have a conversation to examine their
10:08:55 14 decision."

10:08:56 15 You said, "Exactly."

10:08:57 16 Do you see that?

10:08:59 17 MS. SWIFT: Your Honor, that's improper
10:09:00 18 impeachment. It's not inconsistent.

10:09:02 19 THE COURT: Overruled.

10:09:04 20 **Q** Do you see where you said that yesterday?

10:09:06 21 **A** I do.

10:09:07 22 **Q** And then I said, "And decide if it was appropriate,
10:09:10 23 didn't you?"

10:09:11 24 You said, "Exactly."

10:09:13 25 Do you see that?

10:09:14 1 **A** I did say that.

10:09:15 2 **Q** And then I said, "And those businesspeople had no
10:09:19 3 business doing that, did they?"

10:09:20 4 And you said, "I completely disagree with you,"
10:09:24 5 yesterday, didn't you?

10:09:24 6 **A** I did because you did not let me finish what I was
10:09:27 7 trying to say.

10:09:28 8 You know, you're doing a great job going question to
10:09:31 9 question. I was not able to get out the full information
10:09:34 10 yesterday.

10:09:34 11 **Q** Ma'am, you not only answered my questions, you
10:09:38 12 answered questions from Ms. Swift.

10:09:40 13 **A** Yes, I did.

10:09:41 14 **Q** I'm just asking you, yesterday you testified, "You
10:09:51 15 sent the businesspeople in to have a conversation to examine
10:09:54 16 their decision?"

10:09:55 17 "Exactly.

10:09:56 18 "Decide if it was appropriate, didn't you?

10:09:58 19 "Exactly."

10:09:59 20 **A** Decide if it was appropriate that they had
10:10:02 21 documentation onto why they were not filling the
10:10:05 22 prescription for pain medication patients that were
10:10:09 23 legitimate patients coming into our stores that needed our
10:10:12 24 help.

10:10:12 25 **Q** And then today I ask you --

10:10:16 1 **A** I can't read that, sorry.

10:10:17 2 **Q** It's getting there. Hold on.

10:10:23 3 Today I ask you, "You sent businesspeople in.

10:10:31 4 "Yes.

10:10:31 5 "To have a conversation to examine the decision and

10:10:34 6 decide if it was appropriate, didn't you?"

10:10:38 7 You said, "No, not to decide if it was appropriate."

10:10:43 8 Do you see that?

10:10:43 9 **A** I do.

10:10:44 10 **Q** And yesterday I said, "You sent businesspeople in to

10:10:48 11 have a conversation to decide if it was appropriate?"

10:10:53 12 You said, "Exactly."

10:10:54 13 And when I said they don't have business doing it, you

10:10:59 14 disagreed.

10:10:59 15 Do you see that?

10:10:59 16 **A** Yes.

10:11:00 17 **Q** So then let's go back to where we were when I was

10:11:02 18 asking you this question.

10:11:06 19 Ma'am, what that businessperson did, that store

10:11:10 20 manager did, was in line with what you had put in as a

10:11:14 21 policy?

10:11:15 22 **A** No, the businessperson was not the store manager.

10:11:18 23 **Q** You don't think a store manager is a businessperson?

10:11:20 24 MS. SWIFT: Objection. She wasn't finished

10:11:22 25 with her answer.

10:11:23 1 **A** The businessperson that was in the complaint was not
10:11:27 2 who this was intended for. This is pharmacy supervisors and
10:11:35 3 the market leaders.

10:11:37 4 The complaint that you're referring to was a store
10:11:46 5 manager.

10:11:46 6 **Q** And by the way, just to make sure the record's full,
10:11:49 7 you did say that the businessperson can -- should encourage
10:11:54 8 the pharmacist to obtain more information on pain
10:11:59 9 management, such as continuing education courses?

10:12:01 10 **A** Yes. We want our pharmacists to feel trained and
10:12:06 11 supported when they are filling all prescriptions.

10:12:12 12 **Q** And your supporting documents there are to go look at
10:12:18 13 the continuing educations, which is where y'all have
10:12:23 14 these --

10:12:23 15 **A** We do have continuing educations. And I myself took
10:12:29 16 continuing education courses to better understand pain
10:12:32 17 management. I attend conferences about understanding pain
10:12:38 18 management and also people with opioid addiction, trying to
10:12:40 19 figure out how can we best get information to our
10:12:44 20 pharmacists to make sure they're -- they feel supported and
10:12:48 21 properly trained.

10:12:49 22 **Q** Now, ma'am, I was going to ask you, was there a policy
10:12:53 23 change after this, and I'm going to ask it specifically in
10:12:56 24 reference to what you testified yesterday.

10:12:57 25 Did you have a policy change after the incident with

10:13:02 1 pharmacist Yaeger where you said businesspeople should not,
10:13:06 2 should not be doing the things you instructed them to do
10:13:09 3 years before?

10:13:10 4 **A** I didn't make any policy changes.

10:13:14 5 **Q** Okay. This -- Mr. Yaeger's complaint that I pulled
10:13:18 6 out, that's not even remotely the only complaint that's out
10:13:21 7 there like this, is it?

10:13:22 8 **A** That's the one that I'm aware of for this --

10:13:27 9 **Q** You don't know, then, about Christy Porter? Does that
10:13:37 10 name ring a bell?

10:13:38 11 **A** No.

10:13:38 12 **Q** Do you know who Hailey Park is?

10:13:42 13 **A** Hailey Park was a pharmacy supervisor in California,
10:13:45 14 if it's the same Hailey Park.

10:13:50 15 **Q** And you don't know anything about the complaints that
10:13:52 16 may have been made concerning that?

10:13:54 17 **A** Not that I recall, I do not.

10:13:56 18 **Q** All right. That's the computer stop.

10:14:05 19 Last stop, store reports.

10:14:16 20 I did the refusals to fill already. That was a lot of
10:14:21 21 this. But it segued into what we were doing. There are
10:14:28 22 some specific documents though that I want to talk about.

10:14:31 23 You were shown a document that was it looks like some
10:14:36 24 kind of a spreadsheet that was given to you by Ms. Swift.

10:14:43 25 Do you remember this?

10:14:44 1 **A** Yes.

10:14:46 2 MR. LANIER: And I don't have mine with a
10:14:49 3 stamp of a number on it, so I'm not sure what the exhibit
10:14:54 4 number is, Your Honor?

10:14:56 5 Ms. Fleming, do you have any ready recall?

10:15:08 6 MS. SWIFT: There were a couple of different
10:15:10 7 ones. If you could help us know which one.

10:15:37 8 MR. LANIER: My copy was an unmarked copy, but
10:15:40 9 we believe, Your Honor, it's 2005 is the exhibit number.

10:15:45 10 THE COURT: Okay. Thank you.

10:15:46 11 BY MR. LANIER:

10:15:47 12 **Q** Do you remember testifying about this?

10:15:49 13 **A** I do.

10:15:50 14 **Q** And you said these are the reports for stores that you
10:15:52 15 all get, right?

10:15:53 16 **A** Yes.

10:15:53 17 **Q** My question to you is, what do you do with the
10:15:55 18 problems when you see these?

10:15:56 19 **A** Well, there's a couple things that we look for. We
10:16:03 20 look for the, like, high percent controlled substances to
10:16:11 21 noncontrolled substances. And we will take steps through
10:16:16 22 field leadership. They're our boots on the ground and our
10:16:21 23 eyes and our ears, to follow up with the store. Sometimes
10:16:25 24 my team will call the store, call the pharmacy manager. We
10:16:29 25 look to see where is the store located, does it -- is there

10:16:32 1 a surgery center, is there a -- you know, what is around
10:16:36 2 that store, you know, is it a 24-hour store.

10:16:42 3 And we determine as best we can with the information
10:16:45 4 that we have, and then sometimes we'll, you know, ask the
10:16:49 5 field leadership or loss prevention to make a store visit.

10:16:54 6 **Q** Okay. Ma'am, the problems with these stores on this
10:17:00 7 sheet, did you y'all do anything at all?

10:17:03 8 MS. SWIFT: Objection. Mischaracterizes.

10:17:04 9 **A** I couldn't tell you --

10:17:05 10 THE COURT: Overruled.

10:17:05 11 **A** I couldn't tell you if we did something specific at
10:17:09 12 this store at certain points in time. I reviewed this data
10:17:13 13 for Trumbull County as I was looking through to get ready
10:17:19 14 for this.

10:17:19 15 **Q** Yeah, someone ran this, and you told me before you
10:17:21 16 didn't know the store numbers, but you're trusting that
10:17:24 17 someone ran the right store numbers for Lake and Trumbull
10:17:27 18 County, right?

10:17:28 19 **A** Yes.

10:17:28 20 **Q** And you didn't see anything that alerted you on these
10:17:31 21 sheets?

10:17:32 22 **A** I didn't see anything that was, you know, a big alert.
10:17:35 23 I saw that the opioid dispensing for these stores over the
10:17:40 24 course of the time was decreasing, which made sense with
10:17:44 25 what was happening in the industry. I didn't see -- I

10:17:52 1 didn't -- nothing jumped out to me on the page, no.

10:17:54 2 Q Well, let's look at the page together.

10:17:59 3 2014, page 1.

10:18:04 4 Do you see that?

10:18:04 5 A Yes.

10:18:05 6 Q And this is one of the stores in Lake and Trumbull

10:18:10 7 County.

10:18:10 8 Do you see that?

10:18:10 9 A Yes.

10:18:11 10 Q And if you look on the right, you've got on the far

10:18:15 11 right "cash prescription percentage."

10:18:21 12 Do you see that?

10:18:21 13 A I do.

10:18:22 14 Q 9 percent cash at that store for the prescriptions.

10:18:27 15 You see that?

10:18:28 16 A Yes.

10:18:28 17 Q Much higher than what you told me is expected in your
10:18:33 18 stores, right?

10:18:33 19 A It is higher, but that doesn't mean that there's
10:18:36 20 something wrong. You have to understand the community, you
10:18:38 21 have to understand what's happening in that area.

10:18:42 22 Q Mm-hmm. And then if you continue to look, right below
10:18:47 23 it, 7.5 percent at that store, much higher than the average
10:18:53 24 that you told me would -- you let me use 5, but you said it
10:18:57 25 was down to, like, 2 percent or something, right?

10:18:59 1 **A** Depends on the store and the location, yes.

10:19:01 2 **Q** Yeah. You know, and a lot of these are down low.

10:19:06 3 Look at this one. 7.7 percent.

10:19:11 4 Do you see that?

10:19:11 5 **A** I do.

10:19:12 6 **Q** And do you see how the percentage of oxy 15 and 30 is

10:19:19 7 higher than all of the stores around it?

10:19:21 8 **A** Well, hold on, because I got to see -- first off,

10:19:27 9 that's not sorted by store.

10:19:29 10 **Q** Well --

10:19:30 11 **A** It's not sorted by store, so you have to see -- so --

10:19:38 12 **Q** You're right, you're right. Let's do it this way.

10:19:42 13 Let's do it this way.

10:19:43 14 Do you see how this entry 7.7 percent has an 18

10:19:50 15 percent prescription control and 4.3 percent are these oxy

10:19:58 16 15 and 30 tablets?

10:20:00 17 Do you see that?

10:20:01 18 **A** 4.3 percent of the controlled substances they fill,

10:20:04 19 yes.

10:20:05 20 **Q** And if -- that's a big cash payment place, right? 7.7

10:20:10 21 percent, unusually high, true?

10:20:12 22 **A** There's a 7 percent, yes.

10:20:15 23 **Q** And so you compare it just to the entry before. And

10:20:18 24 I'll tell you if you can see on your sheet, but that's store

10:20:22 25 5549.

10:20:23 1 1.3 percent cash and a one-third amount of the oxy.

10:20:32 2 Do you see that?

10:20:32 3 **A** I do.

10:20:33 4 **Q** 3.6 percent cash, no oxys.

10:20:36 5 Do you see that?

10:20:37 6 **A** Yes.

10:20:37 7 **Q** 1.4 percent cash, 1 1/2 percent oxys, do you see that?

10:20:44 8 **A** Yeah.

10:20:46 9 **Q** You don't really get anything like that -- well,

10:20:48 10 you've got a 4.1. That's getting close. But you don't get

10:20:52 11 anything like that until you get up to this entry, 4.4

10:20:55 12 percent.

10:20:56 13 Do you see that as well?

10:20:57 14 **A** Yes.

10:20:58 15 **Q** And again, unusually high cash, right?

10:21:05 16 **A** It's 9 percent cash.

10:21:07 17 **Q** And if you look at it, that's the same store, 9077,

10:21:13 18 isn't it?

10:21:15 19 **A** The 7 percent?

10:21:16 20 **Q** Yes.

10:21:19 21 **A** Yes.

10:21:19 22 **Q** You can keep looking down the sheet. You're going to

10:21:25 23 see -- by the way, some of these, for example, this 8.3

10:21:30 24 percent, has a low rate of oxys, doesn't it?

10:21:35 25 **A** Yes.

10:21:35 1 **Q** But a pretty high rate of other controlled substances.

10:21:41 2 See that?

10:21:42 3 **A** Yeah.

10:21:43 4 **Q** You can keep looking down. Here's another 7 1/2

10:21:46 5 percent cash.

10:21:48 6 You've got 5.3 percent oxys. Incredibly high

10:21:57 7 percentage.

10:21:58 8 Do you see that?

10:21:59 9 **A** I see the number there, yes.

10:22:01 10 **Q** And you keep going down, you'll see big cash payments

10:22:06 11 at a number of different stores with either big oxy or big

10:22:10 12 other percentages of controlled substances.

10:22:12 13 You see that as well?

10:22:13 14 **A** I see the percents you're circling, yes.

10:22:19 15 **Q** You can flip it to the next page. You can see the

10:22:22 16 same thing. You're going to see a lot of cash that is

10:22:25 17 unusually high and you're going to see a high volume of

10:22:27 18 controlled substances.

10:22:29 19 Do you see that as well?

10:22:30 20 **A** I see the numbers you're circling.

10:22:36 21 **Q** So when you put a sheet like this up to the jury and

10:22:40 22 you testify that, here, look, we did all of these checks,

10:22:44 23 look at all that we did, we were getting this data

10:22:48 24 regularly, you never even checked these stores before you

10:22:51 25 came in here, did you?

10:22:52 1 **A** I personally did not check these stores. I oversee
10:22:57 2 the entire country. We do --

10:22:59 3 MS. SWIFT: Objection. She's still finishing
10:23:01 4 her answer.

10:23:02 5 THE COURT: Hold it, hold it, hold it.

10:23:03 6 MR. LANIER: Sorry.

10:23:04 7 THE COURT: Mr. Lanier, please let Ms. Polster
10:23:06 8 finish her answer.

10:23:06 9 MR. LANIER: My fault, Judge. I don't see her
10:23:08 10 and I --

10:23:09 11 **A** We do have multiple reports that go to the field
10:23:11 12 leaders. We talked about that yesterday. That was that
10:23:14 13 e-mail link that you had me testify about, you know, the
10:23:18 14 reports and all of that.

10:23:19 15 Within that link, those are specific reports that go
10:23:23 16 to the field leaders that give them this information that
10:23:27 17 they go in to check what's happening in their locations.

10:23:32 18 And those field leaders, again, they are eyes and ears, our
10:23:37 19 boots on the ground, and when one of the -- when something
10:23:42 20 would trigger on the report, whether it is the store is
10:23:49 21 dispensing for oxy than they had before and there was a
10:23:52 22 deterioration, that they do their due diligence to ensure
10:23:57 23 that why is that happening and understand that the business
10:24:01 24 that's happening for that store makes sense.

10:24:04 25 **Q** Okay. Ma'am, can you please answer my question?

10:24:06 1 **A** Please ask it again.

10:24:09 2 **Q** Yes, ma'am.

10:24:10 3 I said, "When you put a sheet like that up there to
10:24:19 4 the jury and you testify that, here, look, we did all of
10:24:22 5 these checks, look at all we did, we were getting this data
10:24:25 6 regularly," question, "You never even checked these stores
10:24:30 7 before you came in here, did you?"

10:24:34 8 **A** For me personally, no.

10:24:35 9 **Q** You didn't have it done, did you?

10:24:36 10 **A** Oh, that's not true.

10:24:38 11 **Q** Okay. So you had someone go back and look through
10:24:41 12 those months with the high cash volumes and the high
10:24:45 13 percentage volumes and check to see if those were proper
10:24:49 14 dispensings?

10:24:49 15 **A** Those reports go to the field leaders, and that is
10:24:54 16 part of their responsibility to make sure.

10:24:55 17 **Q** That wasn't my question, ma'am. I said before you
10:24:58 18 have came in here today -- before you came in here to
10:25:01 19 testify, did you look at those reports you were swearing to
10:25:06 20 and tell someone, hey, would you agree investigate and make
10:25:11 21 sure that I'm okay saying this on these cash payments?

10:25:15 22 **A** Oh, no, no, I never said that.

10:25:18 23 **Q** You never had anyone do that homework for you; is that
10:25:21 24 right?

10:25:21 25 **A** But we had this report pulled for the Lake and

10:25:24 1 Trumbull Counties, but I didn't tell my stores or my people
10:25:32 2 to go in and check that, that's absurd.

10:25:34 3 **Q** No, ma'am, if you're going to come in and testify that
10:25:37 4 these stores weren't doing anything wrong, don't you think
10:25:39 5 you should look?

10:25:40 6 **A** No, you said -- that is not what -- read back what you
10:25:44 7 said.

10:25:47 8 **Q** I said, "When you put a sheet up there" -- no, "When
10:25:51 9 you put a sheet like that up there the jury and you testify
10:25:54 10 that, here, look, we did all these checks, look at all we
10:25:59 11 did, we're getting this data regularly, you never even
10:26:03 12 checked these stores before you came in here, true?"

10:26:08 13 **A** I checked these stores because I had my team pull the
10:26:14 14 data specific.

10:26:14 15 My team sees it for the entire country, and then each
10:26:18 16 field leader will get reports based on the stores that they
10:26:22 17 oversee.

10:26:24 18 Yes, I had them pull for this -- these stores so I
10:26:29 19 could understand, without looking at the entire country,
10:26:33 20 because the way it's sorted for the entire country is by
10:26:37 21 store number, which is numbers all over the country. I have
10:26:39 22 to signal it out, otherwise there's too much data.

10:26:44 23 **Q** So who did you have check the store reports for store
10:26:48 24 9077 for January of 2014?

10:26:52 25 MS. SWIFT: Your Honor, could we take a side

10:26:54 1 bar, please.

10:26:56 2 (At side bar at 10:26 a.m.)

10:27:09 3 MS. SWIFT: Your Honor, you've already said

10:27:12 4 that you would instruct the jury that there was no

10:27:16 5 obligation to prepare for testifying in this case. We've

10:27:20 6 let this go on with this witness a pretty long time. We

10:27:23 7 think there needs to be an instruction to the jury that she

10:27:25 8 was not obligated to prepare by doing investigation into

10:27:27 9 every store before coming to testify.

10:27:29 10 MR. LANIER: I'm not suggesting it's an

10:27:31 11 obligation, Your Honor. What I'm saying is is she says --

10:27:34 12 MS. SWIFT: He is suggesting there is an

10:27:36 13 obligation.

10:27:36 14 THE COURT: I think you're conflating two

10:27:38 15 things, and I think the last question does suggest that she

10:27:43 16 had some obligation before she testified to have someone

10:27:47 17 check these stores, so she has no obligation.

10:27:54 18 MR. LANIER: I'll clarify that, judge.

10:27:55 19 THE COURT: And she said she personally didn't

10:27:58 20 check the data contemporaneously. She said it's the store

10:28:01 21 manager's job.

10:28:02 22 MR. LANIER: My problem with that, Your Honor,

10:28:03 23 is she waffles and she gives this nonresponsive answer, and

10:28:06 24 she makes it sounds like she had that work done before she

10:28:10 25 came in here and what she's really saying --

10:28:10 1 MS. SWIFT: Your Honor, that's not fair. She
10:28:12 2 did her best.

10:28:12 3 THE COURT: I don't know that she said that.

10:28:13 4 MR. LANIER: No, what she's really -- well,
10:28:14 5 she didn't -- the last answer conflated the two, and I just
10:28:17 6 want to separate out and make sure that we're clear, I'll
10:28:20 7 say you've got no obligation to do this.

10:28:20 8 MS. SWIFT: No, you were going to ask that the
10:28:24 9 Judge do it.

10:28:24 10 THE COURT: I want you to ask a --

10:28:28 11 MR. LANIER: Okay. I'll ask it that way.
10:28:30 12 I'll clarify.

10:28:31 13 THE COURT: I'll instruct the jury that a
10:28:33 14 witness has no obligation before testifying to review or
10:28:36 15 prepare anything.

10:28:36 16 MS. SWIFT: Thank you, Your Honor.

10:28:38 17 THE COURT: I said that before. I'll say it
10:28:40 18 again.

10:28:41 19 So Mr. Lanier, what I want you to do is -- when you
10:28:44 20 ask the question, make sure you're asking her about what she
10:28:47 21 did as part of her job in 2014. If it's 2014 data, what did
10:28:52 22 she do in 2014. If it's 2015 data --

10:28:56 23 MR. LANIER: The problem I have with that,
10:28:58 24 Your Honor, is this is a sheet she never would have reviewed
10:29:00 25 in her job. She reviewed --

10:29:01 1 THE COURT: Well, I don't know that.

10:29:02 2 MR. LANIER: Well, yes, she's already said
10:29:04 3 that. This is a sheet she reviewed to be prepared to
10:29:06 4 testify in this case.

10:29:08 5 THE COURT: Well, you can ask her that. If
10:29:09 6 she says that, then you can cross-examine her on it.

10:29:09 7 MR. LANIER: Thank you.

10:29:13 8 THE COURT: I don't think she said that.

10:29:14 9 MR. LANIER: I think so, but I'll ask it. And
10:29:16 10 if I'm wrong, I'm wrong.

10:29:17 11 THE COURT: Right, you can ask her that, and
10:29:19 12 if she says yes, I reviewed it, well, then you can question
10:29:22 13 her about it.

10:29:23 14 MR. LANIER: Thank you, judge.

10:29:25 15 MS. SWIFT: We would like the instruction from
10:29:26 16 the judge first before that happens, please.

10:29:28 17 MR. LANIER: I think that's improper comment
10:29:29 18 at this point in time, Your Honor. But, I mean, you're the
10:29:33 19 judge. I'm not going to --

10:29:38 20 (In open court at 10:29 a.m.)

10:29:38 21 THE COURT: Ladies and gentlemen, I think I've
10:29:40 22 told you before but I'll repeat it again, a witness who's
10:29:45 23 called or subpoenaed to testify has no obligation other than
10:29:49 24 to show up and answer everyone's questions truthfully to the
10:29:53 25 best of their knowledge. If they do prepare by reviewing

10:29:57 1 things, they may, and counsel can ask them what, if
10:30:01 2 anything, they did to prepare. But they have no obligation
10:30:03 3 to do it.

10:30:07 4 BY MR. LANIER:

10:30:09 5 **Q** And in that regard, Ms. Polster, I want to be real
10:30:11 6 clear.

10:30:14 7 Did you review Exhibit 2005 just routinely as part of
10:30:19 8 your job or did you review it specifically to testify in
10:30:22 9 this case?

10:30:23 10 **A** For this case.

10:30:26 11 **Q** So you did that prep work for the case to review this,
10:30:30 12 fair?

10:30:30 13 **A** Yes.

10:30:31 14 **Q** But you did not do the prep work for this case to go
10:30:35 15 back and to check to see what was going on in these stores,
10:30:38 16 fair?

10:30:40 17 **A** Correct, because the field leaders are given that
10:30:43 18 information for them to do that for us.

10:30:45 19 **Q** Well, are you talking about information the field
10:30:48 20 leaders did back in 2014 or for this trial?

10:30:54 21 **A** No -- well, we give them the monthly reports for them
10:30:57 22 to follow up on, each month.

10:31:00 23 **Q** Ma'am, I just want it clear. Are you saying the field
10:31:03 24 people did it in preparation for this trial or you're just
10:31:06 25 relying upon what they did seven years ago?

10:31:09 1 **A** I'm relying that they are doing -- that they are
10:31:12 2 following up on the information that we send them each
10:31:15 3 month.

10:31:16 4 **Q** So seven years ago?

10:31:16 5 **A** Seven years ago we -- each month we give them these
10:31:20 6 reports for them to follow up on.

10:31:25 7 **Q** Okay. Next, you were shown --

10:31:29 8 THE COURT: All right, I think, Mr. Lanier, if
10:31:31 9 we're moving on to another document, it may be a good time
10:31:33 10 for a break.

10:31:34 11 MR. LANIER: Okay, Your Honor. Thank you.

10:31:36 12 THE COURT: Okay. Ladies and gentlemen, we'll
10:31:37 13 take our mid morning break. Usual admonitions.

10:31:42 14 We'll resume in 15 minutes. Thank you.

10:32:12 15 (Recess taken at 10:32 a.m.)

10:51:04 16 (The jury is present at 10:51 a.m.)

10:51:07 17 THE COURT: Okay. Please be seated.

10:51:08 18 And, Mr. Lanier, you may continue, and Ms. Polster,
10:51:12 19 you're still under oath.

10:51:13 20 MR. LANIER: Thank you, Your Honor.

10:51:14 21 BY MR. LANIER:

10:51:15 22 **Q** We are at the last stop of store reports. And in that
10:51:18 23 regard, I've got a couple of juror notes that I see in
10:51:21 24 review I still haven't asked, and I'll put these up here as
10:51:24 25 well, okay?

10:51:25 1 **A** Okay.

10:51:29 2 **Q** But let's start with the store report on coaching
10:51:31 3 opportunities.

10:51:32 4 Do you remember speaking about that and you showed the
10:51:34 5 jury Walgreens Exhibit -- give it a second -- 2347.

10:51:43 6 You had these coaching opportunities, remember?

10:51:46 7 **A** Yes.

10:51:46 8 **Q** Okay. I tried to look at them, tried to check them
10:51:50 9 out.

10:51:50 10 Are these for the stores in this county?

10:51:53 11 **A** I think they're just examples. I don't know if
10:51:55 12 they're in this county or not.

10:51:56 13 **Q** So we don't know if there's any coaching going on in
10:52:01 14 these counties?

10:52:02 15 **A** I would have to -- well, I did not say that. I
10:52:06 16 said -- you asked me --

10:52:07 17 **Q** I said we don't know.

10:52:09 18 **A** I don't know if there are stores in this report that
10:52:14 19 are for this county.

10:52:15 20 **Q** Okay. I looked at these, and I'm looking at the
10:52:24 21 dates. Looks to me like this starts May 28 of 2020.

10:52:28 22 See that?

10:52:28 23 **A** That's just an example of the reports, yes.

10:52:33 24 **Q** Ma'am, that's all I'm saying is the exhibit that you
10:52:41 25 gave us that we showed the jury starts May 28, 2020,

10:52:45 1 correct?

10:52:46 2 **A** Yes.

10:52:50 3 **Q** And it goes through July 31 of 2020.

10:52:53 4 **A** Yes.

10:52:53 5 **Q** Did you give us any coaching opportunity reports for

10:53:00 6 2009?

10:53:01 7 **A** I don't -- no, my team was not in place in 2009.

10:53:11 8 **Q** You know, on the back of this cover page is another

10:53:13 9 sheets that I missed. It's the first sheet. So for the

10:53:15 10 record, to make sure we're clear, it actually starts May 3,

10:53:19 11 2020, not May 28.

10:53:20 12 You see that?

10:53:22 13 **A** Yes.

10:53:28 14 **Q** So I asked you then, I said what about in '20 -- I do

10:53:36 15 have not realtime up.

10:53:38 16 Your Honor, our realtime has stopped on all tables, I

10:53:44 17 believe.

10:53:46 18 MS. SULLIVAN: It's working here.

10:53:53 19 MR. LANIER: I can do it off my brain. Thank

10:53:55 20 you, Ms. Sullivan.

10:53:57 21 MS. SULLIVAN: Mr. Lanier, you're welcome to

10:53:59 22 look at ours.

10:54:01 23 MR. LANIER: Thank you.

10:54:07 24 **Q** Let me just do it this way.

10:54:08 25 When did these coaching opportunity reports start?

10:54:11 1 **A** When I got into position, we started working with my
10:54:16 2 team to come up with ideas of information we could give our
10:54:20 3 stores that would be helpful for field supervision. And so
10:54:23 4 they came in sometime in 2013 when my team was formed.

10:54:28 5 **Q** Oh. So you don't have them for 2012, 2011, 2010,
10:54:33 6 2009 --

10:54:34 7 **A** Right.

10:54:34 8 **Q** -- 2008, 2007, 2006, the years we're looking at?

10:54:39 9 **A** Correct.

10:54:40 10 **Q** By the same token, I noticed that even Exhibit 2005,
10:54:44 11 the one you'd said was prepared in a sense for this case,
10:54:53 12 that starts in -- the oldest I could find is 2014 going
10:54:59 13 through here.

10:54:59 14 Is that right?

10:55:02 15 **A** That might be the time frame that that report was
10:55:04 16 pulled.

10:55:06 17 **Q** Yeah, why did you not pull time framed reports for
10:55:12 18 2008, '9, '10, '11?

10:55:16 19 **A** My team was not responsible for that information at
10:55:18 20 that time. My team didn't exist. And we pulled the report
10:55:23 21 during the time that my team wasn't in position.

10:55:27 22 **Q** Okay. You're saying it did not exist at that time?

10:55:29 23 **A** My team.

10:55:31 24 **Q** Right. Did the report exist at that time?

10:55:36 25 **A** I don't know what the previous departments measured or

10:55:42 1 looked at. I know that my team has an aggregate of data,
10:55:49 2 and the headers are there on the top. I don't know if the
10:55:55 3 distribution centers ran reports like that.

10:56:00 4 **Q** Okay. So in terms of offering testimony to the jury
10:56:03 5 about what was being done in 2006, '7, '8, '9, '10, '11,
10:56:11 6 '12, you have none to offer on that; is that fair?

10:56:13 7 **A** I believe I answered that we had a team that was
10:56:16 8 responsible in the distribution centers, but I do not know
10:56:20 9 all the steps that they took.

10:56:21 10 **Q** Okay. Can you answer my question, please?

10:56:25 11 **A** I'll need you to reask it.

10:56:27 12 **Q** Yes, ma'am. Here it was.

10:56:29 13 "So in terms of offering testimony" -- whoops, let me
10:56:33 14 get it up there a little bit better. Sorry.

10:56:36 15 "So in terms of offering testimony to the jury about
10:56:40 16 what was being done in 2006, '7, '8, '9, '10, '11, '12, you
10:56:48 17 have none to offer on that; is that fair?"

10:56:53 18 **A** Correct.

10:56:53 19 **Q** Thank you.

10:57:04 20 Now we got some more questions from the jury I'd like
10:57:06 21 to set before you that I did not get to yet.

10:57:09 22 "Does or did the individual pharmacist delete
10:57:14 23 comments, or did the company or someone in a supervisory
10:57:18 24 position?"

10:57:18 25 **A** It would be a pharmacist at the store. They would

10:57:22 1 want to make sure that the most recent information for the
10:57:27 2 prescription that they're refusing is fit into the comment
10:57:30 3 field.

10:57:31 4 And, no, the company has never deleted records off of
10:57:36 5 a patient's profile.

10:57:37 6 Q So it was the individual pharmacists who would delete
10:57:40 7 as they didn't have enough room to put in the new info?

10:57:43 8 A At the store, correct.

10:57:44 9 Q "For clarification purposes, did you say that the
10:57:50 10 threshold for the ordering of controlled substances,
10:57:54 11 Schedule II, were all set from the same point no matter the
10:57:57 12 size and/or amounts dispensed at each pharmacy?"

10:58:02 13 A No. So the way the ordering system works, it is on a
10:58:08 14 linear regression line, and the -- I'm going to do the best
10:58:14 15 I can to explain it because I didn't put the system
10:58:18 16 together.

10:58:19 17 So what happens is is that there is a ceiling for how
10:58:28 18 many bottles can be ordered at any one time, and then there
10:58:31 19 is the threshold that is the total quantity that can be sent
10:58:34 20 to the store over a six-week rolling period based on the
10:58:38 21 business, and it's compared to the peer stores that are the
10:58:43 22 like volume.

10:58:44 23 And so let me just read the question, make sure I'm
10:58:48 24 answering correctly.

10:58:53 25 Q I think the thrust of the question may be --

10:58:55 1 MS. SWIFT: Your Honor, she was trying to make
10:58:57 2 sure she answered the question completely.

10:58:59 3 THE COURT: Let's make sure the witness is
10:59:01 4 finished.

10:59:04 5 **A** So, no, it's not set for the same point. It's a
10:59:09 6 rolling six-week period of time. And like when one week
10:59:15 7 rolls off, the next week rolls on. So it's continuous.

10:59:18 8 I'm not sure I'm answering your question, I'm sorry.

10:59:32 9 It's a rolling period of time. The most recent week rolls
10:59:37 10 off as the next week rolls on, and it takes into account the
10:59:42 11 volume of the store, the prescriptions that are dispensed,
10:59:47 12 and it ensures that the store cannot build the inventory
10:59:55 13 that they do not need, that they are dispensing the
10:59:58 14 inventory that they need and they have -- for their patients
11:00:02 15 that they have. And if they're running out of tablets and
11:00:06 16 the algorithm is not set correctly or it needs to be
11:00:09 17 adjusted, it cannot be done if they're exceeding the
11:00:13 18 threshold or the ceiling without filling out an override
11:00:17 19 form that goes to their district manager for review and then
11:00:21 20 to my team to review and then on to the like our wholesaler.

11:00:28 21 **Q** So let me ask the question -- are you through with
11:00:31 22 your answer?

11:00:31 23 **A** Yes.

11:00:31 24 **Q** Let me ask the question this way and see if we can get
11:00:35 25 some good understanding on it.

11:00:37 1 You've got a Walgreens store, and that Walgreens store
11:00:47 2 has 100 bottles of oxy?

11:00:56 3 **A** We would not have 100 bottles of oxy in one store at
11:01:01 4 one time.

11:01:01 5 **Q** Here. One bottle of oxy.

11:01:04 6 **A** Okay.

11:01:04 7 **Q** The number is irrelevant for this illustration.

11:01:06 8 If that store has one bottle of oxy and then the next
11:01:15 9 week has sold that bottle and orders one more bottle, and
11:01:21 10 the next --

11:01:21 11 **A** I'm sorry, can I correct you?

11:01:23 12 **Q** Yeah.

11:01:23 13 **A** The store cannot order.

11:01:26 14 **Q** Okay.

11:01:26 15 **A** So it has to be -- the algorithm that comes from the
11:01:31 16 ordering system, we do not let the store just order the
11:01:36 17 merchandise. We -- the system places the order on behalf of
11:01:45 18 the store. And if that algorithm that is determined for
11:01:48 19 that location, based on their volume and their peers and all
11:01:50 20 that kind of stuff, if it is not accurate and they need more
11:01:55 21 than what the system has generated for them, then they have
11:01:59 22 to use an override form to get additional product.

11:02:04 23 **Q** And so we're clear, you're talking about the way the
11:02:06 24 system works now?

11:02:08 25 **A** Yes.

11:02:08 1 **Q** Because it used to be that the pharmacy managers could
11:02:13 2 order the pills, right?
11:02:14 3 **A** Yeah, back when I was in pharmacy and I worked back
11:02:17 4 there, early -- you know, late '90s, yes.
11:02:19 5 **Q** Well, even into the 2000s the pharmacy managers could
11:02:23 6 order the pills, right?
11:02:24 7 **A** Yes, they placed it on paper forms that came from the
11:02:27 8 DEA, yes.
11:02:28 9 **Q** So if I'm talking about back in the 2000 to 2010
11:02:36 10 range, you don't have that algorithm in place yet, do you?
11:02:40 11 **A** Correct.
11:02:40 12 **Q** That doesn't come into play until 2014 or '13?
11:02:46 13 MS. SWIFT: Objection, foundation.
11:02:47 14 THE COURT: Overruled.
11:02:49 15 **A** It was in place -- I know it was in place in 2012
11:02:55 16 because I got trained on it.
11:02:56 17 **Q** Okay. That gives us an idea.
11:02:58 18 **A** But I don't know how far before that, in fairness.
11:03:01 19 **Q** Fair enough. And so we'll leave the gap there. We
11:03:04 20 know that the algorithm is here, we know the algorithm was
11:03:08 21 not here.
11:03:09 22 Fair?
11:03:10 23 **A** Or a different algorithm, but yes.
11:03:12 24 **Q** Different or no.
11:03:16 25 Now, whether the algorithm or a process orders the

11:03:24 1 bottle or a pharmacy orders the bottle, depending upon the
11:03:28 2 year, you get a bottle of oxy, and then you might need
11:03:34 3 another one because you sold it. Right?

11:03:36 4 **A** Correct.

11:03:36 5 **Q** Might need another one because you sold it. Right?

11:03:41 6 **A** Yes.

11:03:41 7 **Q** And the algorithm on a store-by-store basis keeps up
11:03:47 8 and tries to see whether or not there's an increase that's
11:03:53 9 unusual, right?

11:04:01 10 Does it look for unusual increases?

11:04:05 11 **A** My algorithm does. I cannot speak to what happened
11:04:11 12 before my team took over.

11:04:12 13 **Q** Okay. And that's some of the clarification I wanted.
11:04:16 14 So that line right there, we need to keep it down
11:04:20 15 coming this way. Now it looks for unusual increases. You
11:04:24 16 don't know if it did before, right?

11:04:25 17 **A** Correct.

11:04:26 18 **Q** Okay. And if it looks for unusual increases, it does
11:04:31 19 that on a six-week rolling basis?

11:04:33 20 **A** Mine does, yes.

11:04:34 21 **Q** And I'll stay on your side of that line.

11:04:40 22 So it allows a gradual increase on a six-week rolling
11:04:45 23 basis but not a sharp increase, fair?

11:04:49 24 **A** It will allow an increase to the threshold that was
11:04:57 25 determined for that store based on its peers and the

11:05:02 1 prescriptions that has dispensing, but it won't go over that
11:05:06 2 threshold that is set for that store. There's a maximum
11:05:08 3 amount that is set based on the volume of the store and the
11:05:14 4 peers' like stores in their group.

11:05:17 5 **Q** All right. Last juror question that I've been able to
11:05:21 6 find is this one that says, "Jonkman-systemic matter? Based
11:05:31 7 on what?"

11:05:32 8 **A** So he had made a comment because he had not seen the
11:05:35 9 aggregated data for that basic control initiative yet. He
11:05:39 10 was hearing from, you know, like, people that he oversaw
11:05:43 11 because he worked in the asset -- or loss prevention
11:05:46 12 department at the time. And he was seeing some of the data
11:05:49 13 come in. He did not see all of the data come in.

11:05:53 14 So his comment to me in -- you know, in that hallway
11:05:58 15 conversation was, "I don't know if this is systemic or
11:06:03 16 what's happening yet. I don't have all the data. I'm just
11:06:05 17 giving you a heads up that this is what I've seen on a
11:06:09 18 couple of the reports that have come in."

11:06:12 19 **Q** And in that regard, I went through the big box of --
11:06:16 20 Ms. Conroy went through the big box of refusals to fill, and
11:06:25 21 we found Walgreens 2604.00566.

11:06:31 22 It says, "Do we still have a good faith dispensing
11:06:35 23 refusal folder? Couldn't find it."

11:06:37 24 Do you see that note?

11:06:39 25 **A** I see it.

11:06:39 1 **Q** Let's understand it, please.

11:06:42 2 GFD stands for good faith dispensing, right?

11:06:48 3 **A** Yes.

11:06:48 4 **Q** And that's the folder where these forms are supposed

11:06:53 5 to be, right?

11:06:54 6 **A** Yes.

11:06:54 7 **Q** And you've told us repeatedly the pharmacists can go

11:06:59 8 back and look in the folder, right?

11:07:01 9 **A** Yes.

11:07:01 10 **Q** And yet we have a note from one of these stores in

11:07:06 11 Ohio that says, do we still have such a folder? I couldn't

11:07:13 12 find it.

11:07:13 13 Do you see that that note?

11:07:16 14 **A** I do see that.

11:07:18 15 **Q** And so if we look at what was or was not dispensed or

11:07:23 16 what might be attached, the page doesn't tell us anything at

11:07:26 17 all, does it?

11:07:27 18 **A** I don't know what that is.

11:07:31 19 **Q** This was the way it was in your box you told us about.

11:07:34 20 You understand this is the copy of your box we got.

11:07:36 21 **A** I understand that.

11:07:37 22 **Q** Well, do you think that's a good thing if the store

11:07:42 23 people can't find the good faith dispensing refusal folder?

11:07:47 24 **A** There could be all kinds of reasons why that

11:07:51 25 pharmacist couldn't find it. They could have been on leave,

11:07:54 1 they could have been on vacation, it could have gotten
11:07:56 2 moved, there could have been a new pharmacy manager that
11:07:59 3 moved it and didn't communicate to all their pharmacists. I
11:08:04 4 mean, I don't know the reason why she wrote that.

11:08:08 5 **Q** Then one of the last documents that I want to talk to
11:08:11 6 you about from Ms. Swift's direct examination of you is
11:08:17 7 Walgreens Exhibit 23625. It's the one with Brian Joyce
11:08:23 8 talking about Dr. Veres.

11:08:27 9 Remember this?

11:08:27 10 **A** Yes.

11:08:28 11 **Q** And it's the one where as of 2018 and Giant Eagle have
11:08:35 12 stopped filling controls for that doctor. Right?

11:08:39 13 **A** Yes.

11:08:39 14 **Q** Now, the jury's already heard Mr. Joyce testify that
11:08:44 15 he's known this guy was a problem for 20 or 25 years.

11:08:49 16 Did you know that?

11:08:49 17 **A** You just told me.

11:08:50 18 **Q** Okay. But other than me telling you, did you know it?

11:08:53 19 **A** Or the e-mail that he sent.

11:08:56 20 **Q** Yeah. Well, I mean, the e-mail doesn't say the 20 to
11:08:59 21 25 years, but the e-mail does say, "See below. Is there any
11:09:05 22 way we can refuse his scripts? This doctor has been a
11:09:08 23 problem for a long time."

11:09:10 24 Do you see that?

11:09:10 25 **A** I see that.

11:09:11 1 **Q** Well, I mean, it's possible to refuse his scripts.

11:09:18 2 Giant Eagle is doing it, right?

11:09:23 3 **A** That's what it says.

11:09:24 4 **Q** Walmart's doing it, right? At this point in time.

11:09:32 5 **A** Yes.

11:09:32 6 **Q** But y'all's reply is, "We have to continue to adhere

11:09:37 7 to our good faith dispensing policy and guidelines. If

11:09:47 8 they're refusing scripts and they feel this is a problem due

11:09:49 9 to poor prescribing behaviors, the store can contact the

11:09:53 10 Ohio Board of Medicine to report this prescriber. Ensure if

11:09:59 11 they feel the doctor is not prescribing medications

11:10:01 12 appropriately, they need to have good documentation."

11:10:04 13 Do you see that?

11:10:04 14 **A** I do.

11:10:05 15 **Q** It does not say, yes, let's refuse, does it?

11:10:12 16 **A** No, we do not blanketly refuse all prescribers'

11:10:17 17 prescriptions.

11:10:17 18 **Q** You all just review each prescription on its own

11:10:20 19 merit, right?

11:10:21 20 **A** That is correct.

11:10:21 21 **Q** And so I've got what I'll -- I have marked as

11:10:25 22 Plaintiffs' Exhibit 23676.

11:10:31 23 MR. LANIER: If you could pass that out,

11:10:32 24 please, ladies.

11:10:48 25 **Q** Do you have that in front of you?

11:10:50 1 **A** I do.

11:10:50 2 **Q** This is a collection of prescriptions that Walmart's
11:10:55 3 filled --

11:10:58 4 MS. SWIFT: Walgreens.

11:11:00 5 MR. LANIER: Excuse me. Strike that, Your
11:11:01 6 Honor.

11:11:01 7 **Q** This is a collection of prescriptions that Walgreens
11:11:04 8 filled over the years for Dr. Torres?

11:11:09 9 MS. SWIFT: Objection. No, it's not.

11:11:13 10 **Q** Dr. Veres.

11:11:14 11 MR. LANIER: Judge, I think I left my brain
11:11:16 12 during the break in the break room. Let me try it again.

11:11:20 13 **Q** What we have here are prescriptions that Walgreens
11:11:27 14 filled for Dr. Veres.

11:11:34 15 Do you see that?

11:11:34 16 **A** I do.

11:11:36 17 **Q** And so we can look through here, and we can see, for
11:11:41 18 example, where OARRS reports are run before filling them.

11:11:45 19 MS. SULLIVAN: Your Honor, I'm sorry --

11:11:52 20 THE COURT: Hold it.

11:11:52 21 MS. SULLIVAN: Your Honor, can we get on a
11:11:54 22 side bar and take that down?

11:11:58 23 (At side bar at 11:11 a.m.)

11:12:07 24 MS. SULLIVAN: Your Honor, as I understand
11:12:10 25 Your Honor's ruling that he show this as to Walgreens

11:12:13 1 because Your Honor has decided they've opened the door, this
11:12:17 2 has Giant Eagle prescriptions on it. And Your Honor's
11:12:19 3 ruling was clear that there's no individual prescription
11:12:21 4 data that should be admitted as against the other
11:12:24 5 defendants.

11:12:28 6 MS. SWIFT: For the record, I don't believe
11:12:29 7 the judge has ruled that any door has opened as to
11:12:32 8 Walgreens.

11:12:33 9 THE COURT: Well, first of all, the
11:12:36 10 representation is that these are prescriptions that
11:12:38 11 Walgreens refused to fill. I'm not --

11:12:40 12 MR. LANIER: No, that they did fill, Your
11:12:41 13 Honor.

11:12:41 14 THE COURT: Oh, that they did fill.

11:12:43 15 MR. LANIER: Yes.

11:12:43 16 THE COURT: But I don't know how Walgreens
11:12:45 17 would have filled a Giant Eagle prescription. So if there's
11:12:47 18 Giant Eagle in here, I don't think they should be.

11:12:51 19 MR. LANIER: Well, Walgreens runs the OARRS
11:12:56 20 report.

11:12:56 21 THE COURT: If it was generated -- if
11:12:57 22 Walgreens generated an OARRS report and the OARRS report
11:13:00 23 shows a Giant Eagle prescription, well, then that's still --
11:13:04 24 this Walgreens witness can be examined on it.

11:13:06 25 MR. LANIER: And that's all I'll do, Your

11:13:08 1 Honor. Thank you.

11:13:08 2 MS. SULLIVAN: Your Honor, I would object that
11:13:09 3 she be examined on Giant Eagle prescriptions or that it be
11:13:12 4 shown consistent with your Your Honor's prior ruling.

11:13:15 5 THE COURT: My prior ruling was different. If
11:13:18 6 a Walgreens employee before filling a prescription runs an
11:13:23 7 OARRS report, the OARRS report's going to show maybe data
11:13:28 8 from a lot of pharmacies. But that's -- that's admissible
11:13:31 9 if that's what the witness did or the pharmacist did.

11:13:36 10 MR. LANIER: Thank you, Judge.

11:13:38 11 (In open court at 11:13 a.m.)

11:13:50 12 BY MR. LANIER:

11:13:51 13 Q So, for example, we can look on page --

11:13:57 14 MR. LANIER: The Bates number, Your Honor, for
11:13:58 15 the record, is 1094719.

11:14:03 16 Q And we have here an OARRS report.

11:14:06 17 Do you recognize this?

11:14:07 18 A I do.

11:14:08 19 Q And this OARRS report is one that shows prescriptions
11:14:15 20 being filled by Dr. Frank Veres.

11:14:20 21 Do you see that?

11:14:20 22 A Yes.

11:14:21 23 Q And we've got Walgreens filling one there, we've got
11:14:26 24 Walgreens filling two, three more, four more, five more, six
11:14:31 25 more.

11:14:32 1 You see that?

11:14:33 2 **A** I do.

11:14:34 3 **Q** You can continue to look through what Walmart did with

11:14:39 4 Dr. Veres --

11:14:40 5 THE COURT: Walgreens.

11:14:41 6 MR. LANIER: Walgreens. Judge, I apologize.

11:14:43 7 **Q** What Walgreens did for Dr. Veres. And you've got, for
11:14:50 8 example, a sheet that ends in Bates number 1327. It's got a
11:14:56 9 prescription by Frank Veres.

11:14:58 10 Do you see that?

11:14:58 11 **A** Yes.

11:14:58 12 **Q** Oxycodone, 15 milligram tablets, right?

11:15:03 13 **A** Yes.

11:15:03 14 **Q** Payment, cash. 127 bucks and change.

11:15:10 15 See that?

11:15:10 16 **A** Yes.

11:15:13 17 **Q** We can go through and see things like here's a good
11:15:16 18 faith dispensing checklist, on page 1328. This is what your
11:15:21 19 people were trained to fill out, right?

11:15:24 20 **A** Yes.

11:15:24 21 **Q** And this one, did the pharmacist offer naloxone? Says
11:15:34 22 no. But maybe that's because it wasn't a big enough
11:15:38 23 prescription?

11:15:39 24 **A** I don't know why they didn't do that.

11:15:41 25 **Q** "Was there a valid Government photo ID copied and

11:15:46 1 attached to a hard copy of the prescription?" No.

11:15:52 2 Do you see that?

11:15:53 3 **A** I do.

11:15:53 4 **Q** Still dispensed though, right?

11:15:55 5 **A** Doesn't mean that they didn't know the patient.

11:15:57 6 **Q** Well, they don't circle that.

11:16:00 7 **A** No, they didn't, but --

11:16:02 8 **Q** And in fact, it says, "ID is optional for hospice,

11:16:09 9 oncology, bedside delivery, sickle cell patients, and

11:16:13 10 patients known, and the underlining is in the form itself,

11:16:17 11 right, to the pharmacy staff unless it's required by state."

11:16:21 12 So -- and "patients known," it's "no," isn't it?

11:16:28 13 **A** They're answering no to -- well, the way I read it is

11:16:34 14 they're answering as a valid Government ID posted -- or

11:16:38 15 attached to the hard copy. That's the way I read it.

11:16:40 16 Because they didn't circle known does not mean that they did

11:16:44 17 not know the patient.

11:16:45 18 **Q** So your testimony is the way these forms are filled

11:16:47 19 out, it doesn't all have to be yes before it's a problem?

11:16:51 20 You expect to have nos on that --

11:16:52 21 **A** I am expecting the pharmacists to do their due

11:16:57 22 diligence and fill out their documentation.

11:16:58 23 **Q** But, ma'am, you are one of the ones who talks about

11:17:03 24 the training and reviewing their work. This is a Dr. Veres

11:17:08 25 prescription that Walgreens fills in these counties, and it

11:17:14 1 asks for a valid Government ID copied and attached, and it's
11:17:18 2 not done.

11:17:20 3 And there's no indication on here that the pharmacist
11:17:22 4 knew the patient, is there?

11:17:25 5 **A** There's no indication on the form.

11:17:26 6 **Q** There is room down below to put notes if the
11:17:31 7 pharmacist knows the patient, true?

11:17:33 8 **A** The pharmacist -- it's up to the pharmacist on what
11:17:37 9 notes they want to put in there.

11:17:38 10 **Q** That wasn't my question, ma'am.

11:17:39 11 I said there's room down below to put notes if the
11:17:43 12 pharmacist knows the patient. True?

11:17:45 13 **A** Yes, there's room for them to write notes.

11:17:48 14 **Q** Thank you.

11:17:48 15 Continuing to look through this exhibit. Bates Number
11:17:55 16 9681.

11:17:56 17 Here's another target good faith dispensing checklist.

11:17:59 18 Do you see this one?

11:18:00 19 **A** Yes.

11:18:00 20 **Q** "Valid Government photo ID copied." Yes.

11:18:09 21 "No prior good faith for this refusal." Yes.

11:18:13 22 "PDMP has been checked." Yes.

11:18:15 23 "Patient has received this prescription from Walgreens
11:18:18 24 before."

11:18:26 25 What's the answer on that one?

11:18:27 1 **A** They did not fill out the form.

11:18:29 2 **Q** That's not right, is it?

11:18:32 3 **A** We ask them to use the form as part of the policy and

11:18:38 4 use it for documentation.

11:18:40 5 **Q** I said that's not right, is it?

11:18:42 6 **A** Not right about what?

11:18:44 7 **Q** That's not following policy, is it?

11:18:46 8 **A** Correct.

11:18:46 9 **Q** And yet the drug is dispensed, right?

11:18:53 10 **A** Yes.

11:18:53 11 **Q** Dr. Frank Veres, a doctor that Brian Joyce says he

11:18:59 12 doesn't need to make phone calls because everybody knows

11:19:02 13 this guy has been a problem for 20-plus years, right?

11:19:05 14 **A** I can just tell you what was on the e-mail.

11:19:08 15 **Q** Page 465. Another dispensing checklist for Dr. Frank

11:19:16 16 Veres from this county.

11:19:18 17 Do you see this?

11:19:19 18 **A** Yes.

11:19:19 19 **Q** Yes here, and it looks like "known" was circled.

11:19:28 20 Yes. Yes.

11:19:30 21 But look at number 9. "Chronic prescription use can

11:19:36 22 be explained and is supported by documentation."

11:19:40 23 Do you see that?

11:19:41 24 **A** I do.

11:19:42 25 **Q** And what's checked there?

11:19:43 1 **A** They've got "no" on the checklist.

11:19:45 2 **Q** And do they have any notes to explain why this --

11:19:49 3 MS. SWIFT: Objection. She didn't finish her

11:19:51 4 answer.

11:19:51 5 **A** Do you have a prescription -- or a copy of the actual

11:19:54 6 hard copy prescription for this one?

11:19:57 7 **Q** So what we've got is the page before it and the page

11:20:04 8 after it.

11:20:05 9 **A** I'm sorry, could you put the page before it and remove

11:20:07 10 your thumb? Okay.

11:20:10 11 **Q** Oh, sorry.

11:20:12 12 **A** Okay. Thanks.

11:20:13 13 **Q** No note on the prescription, is there?

11:20:16 14 **A** Well, I don't know what that M25.9 is.

11:20:21 15 **Q** Okay. You know what oxycodone is?

11:20:24 16 **A** I do, but I guess where my head is going is the

11:20:28 17 M25.9 a diagnosis code that they called and got. I don't

11:20:35 18 know. It's not documented on the checklist as you

11:20:39 19 indicated, correct.

11:20:39 20 **Q** I mean, we're looking at the checklist --

11:20:42 21 **A** It is not on the checklist, but if you recall, it

11:20:44 22 doesn't always have to be on the checklist. They have

11:20:46 23 multiple places to put it. I get it's not to policy, but

11:20:50 24 they have multiple places that they can enter information on

11:20:54 25 their hard copy, on the patient's profile.

11:20:57 1 But, yes, they marked that no, just exactly like you
11:21:00 2 said.

11:21:00 3 Q You can look at page 4379 is the end of the Bates
11:21:09 4 number.

11:21:10 5 It looks like on this one everything's just done
11:21:15 6 "yes."

11:21:16 7 Then it says "refused" is checked?

11:21:19 8 A No, I don't see that as refused checked. They signed
11:21:22 9 on the top line.

11:21:25 10 Q No, yeah, this is a dispensed drug. I'm asking you,
11:21:28 11 do you think that looks like they checked refused?

11:21:32 12 A I can't tell what they checked. It looks to me like
11:21:35 13 the signature's higher, but I don't know.

11:21:45 14 Q Page ending 9448, another Dr. Veres prescription
11:21:49 15 filled in this case in these counties. We're in 2018.

11:21:59 16 Do you see this?

11:22:00 17 A Yes.

11:22:00 18 Q And here's your checklist. "Patient does not appear
11:22:03 19 intoxicated or under the influence." That got a "no."

11:22:07 20 Do you see that?

11:22:08 21 A You know what this is telling me? That I need to go
11:22:11 22 back and reword that question. Because I'm wondering if our
11:22:14 23 pharmacists are reading it correctly.

11:22:17 24 Q Well, either that -- well, I mean, the other ones had
11:22:19 25 no trouble answering solid yeses when they had solid yeses,

11:22:24 1 right?

11:22:24 2 **A** Are those words exactly in the same place? I'm sorry.

11:22:27 3 Okay. Thank you.

11:22:28 4 **Q** Yes. Here is page 9355. You'll see it's the exact

11:22:31 5 same form.

11:22:32 6 **A** Got it. Thank you.

11:22:33 7 **Q** It is just, what, a month -- not even a month apart, a

11:22:39 8 few weeks apart.

11:22:40 9 **A** Got it.

11:22:41 10 **Q** Got it?

11:22:42 11 And all of the boxes are checked "yes," and this drug

11:22:49 12 is dispensed.

11:22:50 13 See that?

11:22:50 14 **A** Yes.

11:22:50 15 **Q** Here you've got one checked "no."

11:22:56 16 Right?

11:22:57 17 **A** I see that.

11:22:58 18 **Q** And yet it was dispensed, true?

11:23:01 19 **A** You're telling me it's dispensed. I --

11:23:07 20 **Q** So when you put together all of this information, your

11:23:12 21 testimony is, we will still continue to fill prescriptions

11:23:17 22 based on a case-by-case basis even if it's someone that we

11:23:24 23 know is troublesome, even if it's someone we know the other

11:23:29 24 pharmacists will no longer fill for, Walgreens will keep

11:23:34 25 doing it, right?

11:23:35 1 **A** Our policy is to evaluate each prescription and each
11:23:39 2 patient on its own merit.

11:23:41 3 | Q Okay.

11:23:42 4 MR. LANIER: I pass the witness, Your Honor.

11:23:44 5 | Thank you, ma'am.

11:23:46 6 MS. SWIFT: Your Honor, if I could have just a
11:23:47 7 couple of minutes. I do have some more questions.

11:23:53 8 THE COURT: Yes, sure, Ms. Swift.

11:23:57 9 MS. SWIFT: Thank you.

11:24:02 10 | (Pause in proceedings.)

11:24:43 11 MR. LANIER: Your Honor, may I approach

11:24:45 12 Mr. Pitts to give him back the notes?

11:24:47 13 THE COURT: Sure.

11:24:47 14 MR. LANIER: Thank you.

11:27:07 15 MS. SWIFT: Thank you for your patience.

11:27:08 16 Your Honor, may I proceed?

11:27:11 17 THE COURT: Yes, you may.

18 MS. SWIFT: Good morning, Ms. Polster.

19 THE WITNESS: Good morning.

MS. SWIFT: Thank you for

21 going to try to be as quick as I can.

22 | -----

23 REDIRECT EXAMINATION

24 BY MS. SWIFT:

11:27:17 25 Q Good morning, Ms. Polster. I'm going to try and be as

11:27:20 1 quick as I can.

11:27:27 2 This morning Mr. Lanier asked you about the refusals
11:27:28 3 to fill and the box that you saw. Do you recall those
11:27:31 4 questions?

11:27:31 5 **A** Yes.

11:27:31 6 **Q** I think I heard you say that you didn't count them.

11:27:34 7 Do you know how many refusals there were for Lake and
11:27:37 8 Trumbull County in this -- in the time frame in this case?

11:27:39 9 **A** I did not count them.

11:27:41 10 **Q** Do you have any idea whether Mr. Lanier's math was
11:27:44 11 right?

11:27:44 12 **A** I don't know.

11:27:49 13 **Q** In your experience at Walgreens, is it fair to say
11:27:51 14 that some stores have refused more prescriptions than other
11:27:54 15 stores

11:27:54 16 **A** Yes.

11:27:54 17 **Q** Does the number of prescriptions a store refuses to
11:27:58 18 fill depend on the circumstances of that particular store?

11:28:02 19 **A** Yes.

11:28:02 20 **Q** Can you explain that briefly for the jury, why that
11:28:05 21 would be?

11:28:05 22 **A** So, you know, there are some stores that receive more
11:28:10 23 controlled substances than others based on their geographic
11:28:14 24 location to, you know, prescribers that would write those
11:28:19 25 medications. Not every prescriber will write an oxy. A lot

11:28:26 1 of -- you know, there's only a few prescribers in the
11:28:29 2 country that, you know, are trained in pain management and
11:28:33 3 that write it, so it's not super common to have a lot of
11:28:40 4 high dose controlled substance prescriptions come into
11:28:46 5 locations that a pharmacist would have concern with that
11:28:50 6 they would not be able to resolve the red flags.

11:28:52 7 **Q** Is it fair to say that some stores might have more
11:28:56 8 high dose oxycodone prescriptions for good reason?

11:28:59 9 **A** Yes.

11:28:59 10 **Q** All right. I want to ask some questions about the
11:29:12 11 example refusal that Mr. Lanier showed you this morning, and
11:29:15 12 I'll just try to identify -- I'm not sure I got the exhibit
11:29:19 13 number, but the Bates number on the first page is
11:29:26 14 WAG-MDL-01139001. And it looks like --

11:29:30 15 MS. SWIFT: If I could please have the ELMO,
11:29:32 16 I'll show you what it looks like on the front page. Thank
11:29:36 17 you.

11:29:37 18 **Q** Do you have that, Ms. Polster?

11:29:38 19 **A** Yes.

11:29:38 20 **Q** Does this example show you that Walgreens was -- their
11:29:45 21 pharmacists were running OARRS reports as far back as 2009
11:29:50 22 at least?

11:29:50 23 **A** Yes.

11:29:50 24 **Q** You see that there?

11:29:52 25 **A** I do.

11:29:52 1 Q Okay. Why do you give a prescription back to the
11:30:02 2 patient when it's refused? Is that required by law?

11:30:06 3 MR. WEINBERGER: Objection. Leading.

11:30:08 4 THE COURT: Overruled.

11:30:10 5 **A** We -- if we do not dispense the prescription, we do
11:30:16 6 give it back to the patient. Generally, the only time it's
11:30:20 7 kept from the patient is if during the course of verifying
11:30:25 8 it, the prescriber will say, hey, I didn't write that
11:30:32 9 script, that's not a legitimate prescription.

11:30:36 10 But, yeah, we would give the prescription back to the
11:30:39 11 patient.

11:30:39 12 Q Turning back to this example that Mr. Lanier showed
11:30:42 13 you, were you the pharmacist that refused this prescription?

11:30:47 14 | A No.

11:30:47 15 Q Would you need to evaluate the circumstances of this
11:30:52 16 prescription as they appeared to the pharmacist at the
11:30:56 17 counter in order to determine whether to fill or refuse it?

11:30:59 18 | A Yes.

11:30:59 19 Q I'd like to ask you a question about Exhibit 23678,
11:31:20 20 which is one of the ones that Mr. Lanier showed you this
11:31:22 21 morning. I don't think I have my copy of it though.

11:31:35 22 MS. SWIFT: If anyone has an extra copy, that
11:31:38 23 would be great.

11:31:42 24 I found it.

11:31:43 25 MR. LANIER: I've got a copy if it helps,

11:31:45 1 Ms. Swift.

11:31:47 2 MS. SWIFT: Thank you. I've got it.

11:31:49 3 BY MS. SWIFT:

11:31:50 4 Q Do you have it, Ms. Polster?

11:31:52 5 A I don't.

11:31:52 6 Q I'll show you it to you. You see it says 23678?

11:31:55 7 A Yes.

11:31:56 8 Q This is another example Mr. Lanier showed you this

11:31:58 9 morning?

11:31:58 10 A Yes.

11:31:58 11 Q My only question for you on this one is, do you see on

11:32:10 12 the checklist that's been filled out, do you see where it

11:32:14 13 says "PDMP" and there's a check mark?

11:32:18 14 A Yes.

11:32:21 15 Q Okay. If you could for me, this next series of

11:32:30 16 questions pull out for me in your stack Plaintiffs' Exhibit

11:32:36 17 15085 and Exhibit 2606, which is behind Tab 9 in your binder

11:32:41 18 that I gave you.

11:32:46 19 A I'm sorry. What was the first one?

11:32:48 20 Q Sure. It's 15085. It's the presentation deck about

11:32:53 21 the BCI audit.

11:33:05 22 A Okay.

11:33:14 23 Q Okay. And I want to show -- I want to first focus on

11:33:18 24 on the right side of the screen I've got Exhibit 2606, which

11:33:23 25 is the executive summary with the more detailed results.

11:33:26 1 Do you see that?

11:33:26 2 **A** Yes.

11:33:26 3 **Q** I'm going to call out -- well, first before I do that,

11:33:30 4 I want to go to the right page in your presentation.

11:33:35 5 All right. I've got on the screen the page that shows

11:33:40 6 1,432 stores, 59.5 percent compliance rate.

11:33:43 7 Do you see that there?

11:33:44 8 **A** Yes.

11:33:44 9 **Q** And what I'm going to do is call out question number 5

11:33:48 10 on the other document, which is the executive summary.

11:33:53 11 Can you see that?

11:33:53 12 **A** Yes.

11:33:54 13 **Q** And just so that it's very clear, we saw in the slide

11:34:02 14 deck we've got 1,432 stores, right?

11:34:05 15 **A** Yes.

11:34:05 16 **Q** Then in the executive summary we've also got 1,432

11:34:10 17 stores.

11:34:10 18 It's the same stores, right?

11:34:12 19 **A** Yes.

11:34:13 20 **Q** Okay. You see 59.5 percent up here in the slide deck.

11:34:20 21 Do you see that?

11:34:21 22 **A** Yes.

11:34:21 23 **Q** And that's -- is it the same 59.5 percent that we see

11:34:26 24 down here?

11:34:27 25 **A** Yes.

11:34:27 1 **Q** All right. Now, just to make sure it's clear what
11:34:33 2 we're looking at with this question within the BCI audit,
11:34:36 3 the slide says, "When target drug prescriptions are
11:34:40 4 dispensed, pharmacy team members are responsible for
11:34:42 5 completing the target drug good faith dispensing checklist."

11:34:46 6 Did I read that correctly so far?

11:34:47 7 **A** Yes.

11:34:47 8 **Q** And we've seen a number of target drug checklists
11:34:51 9 filled out, including with the examples that Mr. Lanier
11:34:53 10 marked with you today.

11:34:54 11 Do you recall those?

11:34:55 12 **A** Yes.

11:34:55 13 **Q** Then the question from the BCI audit is, "Number of
11:35:00 14 stores that correctly had a completed TD GFD checklist
11:35:07 15 attached to the filled TD prescription hard copies."

11:35:10 16 Right?

11:35:11 17 **A** Yes.

11:35:11 18 **Q** Does this mean that those 1,432 stores weren't missing
11:35:17 19 a single checklist?

11:35:19 20 **A** Correct.

11:35:20 21 **Q** Does this mean that those 1,432 stores were perfect,
11:35:27 22 with respect to this question?

11:35:27 23 **A** Yes.

11:35:33 24 **Q** The 59.5 percent is referring to a perfect compliance
11:35:37 25 rate, do I have that correct?

11:35:40 1 **A** Right.

11:35:40 2 **Q** Then you see for another 377 stores, am I right that
11:35:49 3 the loss prevention team that conducted this audit found
11:35:54 4 checklists on every target drug prescription they looked for
11:35:57 5 except for one?

11:35:58 6 **A** Yes.

11:35:59 7 **Q** And you remember when we talked about this yesterday
11:36:06 8 we added up the bottom two buckets and we got 5.9 percent.

11:36:12 9 Do you remember that?

11:36:12 10 **A** Yes.

11:36:12 11 **Q** Do these results mean that 94.1 percent of the stores
11:36:16 12 were missing five checklists or fewer?

11:36:18 13 **A** Yes.

11:36:18 14 **Q** You reported to the field -- am I right that you
11:36:23 15 reported to the field just the 59.5 percent that were
11:36:28 16 perfectly compliant?

11:36:29 17 **A** Correct.

11:36:30 18 **Q** Was that because you strive for perfect compliance?

11:36:33 19 **A** Yes.

11:36:34 20 **Q** Was that because you were working hard to get the
11:36:37 21 field to do as good a job as they possibly could?

11:36:39 22 MR. WEINBERGER: Objection, Your Honor. I
11:36:42 23 mean at some point --

11:36:42 24 THE COURT: Sustained.

11:36:44 25 **Q** All right. Now I'm going to go to another question in

11:36:47 1 the slide deck that you've been asked questions about.

11:36:55 2 Okay. Do you see the 1,820 stores on this slide on
11:36:59 3 the left-hand side of the screen?

11:37:00 4 **A** Yes.

11:37:04 5 **Q** I'm going to call out question number 7 in the
11:37:10 6 executive summary so we can do the same thing.

11:37:21 7 Okay. Just to make sure that we are literally on the
11:37:25 8 same page. Let me see if I can get it there. I think that
11:37:27 9 will do.

11:37:27 10 Do you see the 1,820 stores on the slide deck?

11:37:31 11 **A** Yes.

11:37:31 12 **Q** Is that the same 1,820 stores in the executive summary
11:37:38 13 that I've highlighted?

11:37:39 14 **A** Yes.

11:37:40 15 **Q** Okay. Focusing on what the slide deck says, it says,
11:37:51 16 "If the pharmacist determines that the TD prescription does
11:37:54 17 not meet GFD requirements, a copy of the refused
11:37:58 18 prescription and completed TD GFD checklist must be in the
11:38:01 19 designated refusal file folder."

11:38:03 20 Did I read that right?

11:38:05 21 **A** Yes.

11:38:05 22 **Q** Then the question that's being asked is, "The number
11:38:10 23 of stores that correctly had completed TD Government
11:38:13 24 checklist attached to the refused TD prescription hard
11:38:17 25 copies or copies."

11:38:19 1 Do you see that?

11:38:20 2 **A** Yes.

11:38:20 3 **Q** Does that mean that 1,820 stores had no refusals that

11:38:29 4 were missing checklists?

11:38:30 5 **A** Correct.

11:38:30 6 **Q** It doesn't mean they had no refusals. Is that fair?

11:38:35 7 **A** Fair.

11:38:35 8 **Q** What it's looking at here is to find among the

11:38:38 9 refusals that we have, how many are missing checklists

11:38:43 10 attached to them that are supposed to have checklists?

11:38:45 11 MR. WEINBERGER: Objection, Your Honor.

11:38:46 12 Leading the witness.

11:38:46 13 **Q** Is that fair?

11:38:49 14 MS. SWIFT: I'm just trying to make sure I

11:38:51 15 understand what the question is asking.

11:38:52 16 THE COURT: Overruled.

11:38:53 17 **Q** Let me try to do it again a little bit more clearly.

11:38:56 18 Does this mean that for 1,820 stores, every single

11:39:00 19 refused prescription for a target drug that they looked at

11:39:05 20 had a checklist attached?

11:39:06 21 **A** Yes.

11:39:06 22 **Q** Is it true that those 1,820 stores had perfect

11:39:12 23 compliance?

11:39:14 24 **A** Yes. For that question, yes.

11:39:18 25 **Q** Then you can see there's another 216 stores below

11:39:22 1 referenced.

11:39:22 2 Do you see that?

11:39:23 3 **A** Yes.

11:39:23 4 **Q** For those 216 stores, does this result mean that just
11:39:28 5 one refused prescription for a target drug was missing a
11:39:33 6 checklist?

11:39:33 7 **A** Yes.

11:39:34 8 **Q** Does that mean that for those 216 stores, every other
11:39:38 9 refused prescription for a target drug that they looked for
11:39:42 10 had a checklist attached?

11:39:44 11 **A** Yes.

11:39:45 12 **Q** Is it true that the only part of these results that
11:39:50 13 you reported was the number of stores with an absolutely
11:39:52 14 perfect compliance rate?

11:39:54 15 **A** On this one, yes.

11:39:56 16 **Q** And that's the 75.7 percent compliance rate that we
11:39:59 17 see on the slide?

11:40:00 18 **A** Yes.

11:40:00 19 **Q** And the same is true with respect to the slide we were
11:40:04 20 looking at before. Am I right that you only reported the
11:40:08 21 results that were perfect for these questions?

11:40:09 22 **A** Yes.

11:40:10 23 **Q** Do you hold yourself and your team to high standards?

11:40:13 24 **A** I do.

11:40:14 25 **Q** Do you believe there's always room to improve even if

11:40:17 1 you're doing a good job?

11:40:18 2 **A** Definitely.

11:40:19 3 **Q** Was the target drug checklist ever a requirement of a
11:40:24 4 settlement agreement with the DEA?

11:40:26 5 MR. WEINBERGER: Objection, Your Honor.

11:40:28 6 Improper redirect. It was not covered in recross.

11:40:39 7 (At side bar at 11:40 a.m.)

11:40:50 8 THE COURT: All right. I'm going to sustain
11:40:51 9 the objection because I'm not sure this -- this witness
11:40:56 10 didn't negotiate that agreement.

11:40:59 11 MS. SWIFT: She testified she had knowledge
11:41:00 12 about it, Your Honor, and --

11:41:01 13 THE COURT: She knows about it, but I don't
11:41:05 14 think she's testified that she's the one who was tasked
11:41:13 15 with --

11:41:14 16 MS. SWIFT: I'll move on, Your Honor.

11:41:15 17 THE COURT: -- with specifically designing
11:41:18 18 programs, new programs or changing other ones to comply with
11:41:24 19 it. If she was, I'd let her answer.

11:41:26 20 MS. SWIFT: I'll move on, Your Honor.

11:41:28 21 THE COURT: Okay. Thank you.

11:41:33 22 (In open court at 11:41 a.m.)

11:41:39 23 BY MS. SWIFT:

11:41:39 24 **Q** In your -- in the questioning about the BCI audit, the
11:41:46 25 focus has been on the questions related to the target drug

11:41:51 1 checklist. Is that a fair statement?

11:41:53 2 **A** Yes.

11:41:53 3 **Q** Do you recall that the BCI audit covered other topics
11:41:57 4 as well?

11:41:58 5 **A** Yes.

11:41:58 6 **Q** All right. I'm going to turn to one of the things
11:42:04 7 that Mr. Lanier asked you about this morning.

11:42:08 8 Do you remember the questions about the e-mail back
11:42:11 9 and forth between Brian Joyce about Dr. Veres?

11:42:15 10 **A** Yes.

11:42:16 11 **Q** Do you know if the Ohio Board of Medicine ever had a
11:42:20 12 concern with this doctor or took his license way?

11:42:24 13 **A** I don't know.

11:42:24 14 MR. WEINBERGER: Objection.

11:42:25 15 THE COURT: Overruled.

11:42:25 16 **Q** Do you know how many prescriptions Walgreens stores in
11:42:29 17 Lake and Trumbull County filled for Dr. Veres?

11:42:30 18 **A** No.

11:42:31 19 **Q** Do you know how the number of prescriptions that
11:42:33 20 Walgreens filled for Dr. Veres compared to other pharmacies
11:42:38 21 in the area?

11:42:38 22 **A** No.

11:42:38 23 **Q** Would it be appropriate, in your view, as a pharmacist
11:42:42 24 and a leader at Walgreens, to refuse all prescriptions from
11:42:45 25 an individual doctor who is licensed in the state of Ohio to

11:42:49 1 write controlled substances prescriptions where the
11:42:53 2 pharmacist has determined that the prescription is
11:42:57 3 legitimate?

11:42:58 4 **A** If the prescriber holds active licenses, then it would
11:43:07 5 not be appropriate to just refuse their prescriptions. The
11:43:13 6 pharmacists would make a decision based on what they have in
11:43:15 7 front of them with the patient and the prescription and the
11:43:18 8 prescriber.

11:43:19 9 **Q** Do you recall the -- one of the examples Mr. Lanier
11:43:22 10 put in front of you had a note on it on the checklist that
11:43:27 11 said "M25.9," and you asked about it, you said you weren't
11:43:32 12 sure it was a diagnosis code or not.

11:43:34 13 Do you remember that?

11:43:35 14 **A** Yes.

11:43:35 15 **Q** Do you know whether or not M25.9 is a diagnosis code
11:43:40 16 for a joint disorder? Does that jog your memory?

11:43:43 17 MR. WEINBERGER: Objection.

11:43:43 18 THE COURT: Sustained.

11:43:48 19 **Q** If a pharmacist is filling out a checklist and they
11:43:52 20 check "no" to a particular question, does that all by itself
11:43:56 21 mean the pharmacist is supposed to refuse the prescription?

11:43:59 22 **A** No.

11:43:59 23 **Q** Is it just a flag to consider?

11:44:02 24 **A** Yes.

11:44:02 25 **Q** Switching topics.

11:44:08 1 Do you know that if Walgreens ever sold data to a
11:44:14 2 third party, it would have had to be deidentified?

11:44:18 3 **A** Yes. Any data that leaves our organization must be
11:44:21 4 deidentified.

11:44:22 5 **Q** What does it mean to deidentify prescription data?

11:44:26 6 **A** You take away any chance of patient privacy being
11:44:32 7 exposed, so you would not -- you would not send any patient
11:44:38 8 information. You would send the prescription information,
11:44:42 9 like the drug, for example, but not the patient info.

11:44:50 10 **Q** All right. Now I would like for you to take out Tab
11:44:52 11 19 of your binder, please. This is Plaintiffs' Exhibit
11:44:58 12 17156.

11:45:07 13 And this is the investigation file for the pharmacist
11:45:10 14 in Long Beach complaint.

11:45:12 15 Do you remember that?

11:45:12 16 **A** Yes.

11:45:21 17 **Q** All right. I'm going to take you to page 9. If you
11:45:24 18 would turn there with me, please.

11:45:28 19 **A** Okay.

11:45:29 20 **Q** And I want to ask you about the box on this page that
11:45:38 21 is just beneath the one that Mr. Lanier asked you about.
11:45:42 22 I'll call it out for you.

11:45:45 23 Do you recall that Mr. Lanier asked you questions
11:45:47 24 about this gray box that I'm indicating with the cursor?

11:45:50 25 **A** Yes.

11:45:50 1 **Q** I'll call out the box beneath that one.

11:45:56 2 Do you see that it says, towards the top, and I'll
11:46:01 3 highlight it, Jonkman -- and remind you who Jonkman is.

11:46:06 4 **A** Scott Jonkman was the -- he worked in -- or he works
11:46:10 5 in the compliance investigation department.

11:46:15 6 **Q** Do you see what I've highlighted that says, "Jonkman
11:46:18 7 wanted to clarify that he believes the managers handling of
11:46:21 8 the issue to be an isolated incident and not a systemic
11:46:25 9 matter"?

11:46:27 10 **A** Yes.

11:46:27 11 **Q** Do you know how Mr. Jonkman reached that conclusion?

11:46:30 12 **A** It would had to have been on experience.

11:46:36 13 MR. WEINBERGER: Objection, Your Honor. Pure
11:46:41 14 speculation.

11:46:41 15 THE COURT: Sustained. Sustained.

11:46:43 16 **Q** Just yes or no, Ms. Polster, do you know how
11:46:46 17 Mr. Jonkman reached that conclusion?

11:46:48 18 **A** No.

11:46:49 19 **Q** Then towards the middle do you see where it says --
11:46:56 20 I'll highlight it first -- "Manager Domenick believes that
11:47:18 21 there should be clarification from DPR, HCS, and DM -- first
11:47:22 22 of all, what is DPR, HCS, and DM?

11:47:26 23 **A** They are field leader positions in our organization.

11:47:31 24 **Q** Do you know what DPR stands for?

11:47:33 25 **A** Director of pharmacy and retail operations.

11:47:39 1 **Q** Do you know what HCS stands for?

11:47:41 2 **A** Healthcare supervisor.

11:47:42 3 **Q** Is DM district manager?

11:47:43 4 **A** Yes.

11:47:44 5 **Q** Is SM store manager?

11:47:46 6 **A** Yes.

11:47:47 7 **Q** It says, "Manager Domenick believes that there should

11:47:52 8 be clarification from DPR, HCS, and DM to SM regarding SM's

11:47:57 9 roles in supporting pharmacists with GFD regardless of

11:48:01 10 possibility of customer complaint."

11:48:03 11 Do you see that?

11:48:03 12 **A** Yes.

11:48:03 13 **Q** It says, "They should not be attempting to influence

11:48:06 14 the pharmacist's decision to fill a prescription."

11:48:10 15 Do you see that?

11:48:11 16 **A** Yes.

11:48:11 17 **Q** Then at the bottom here, do you see that it says, is

11:48:19 18 has been determined to be an isolated local matter. Steps

11:48:21 19 have been taken to ensure that management knows their role

11:48:24 20 in supporting pharmacists and that the pharmacist should

11:48:28 21 inform compliance if there are any new incidents."

11:48:31 22 Did I read that correctly?

11:48:32 23 **A** Yes.

11:48:32 24 **Q** And if you'll turn to page 4 of this document with me,

11:48:38 25 please.

11:48:48 1 Do you see on page 4 the big gray box at the bottom
11:48:53 2 that is the response to the pharmacist?

11:48:55 3 **A** Yes.

11:48:55 4 **Q** Do you see in the second paragraph where it says, "To
11:49:22 5 summarize your letter"?

11:49:24 6 **A** Yes.

11:49:24 7 **Q** Then what I actually wanted to ask you about is in the
11:49:36 8 next paragraph.

11:49:42 9 Do you see that it says, "We are aware that this
11:49:45 10 matter has taken a considerable time to review, and we
11:49:47 11 appreciate your patience. Since your letter alleges
11:49:50 12 systemic concerns, it took additional time to review your
11:49:53 13 concerns."

11:49:56 14 Is that appropriate, in your view, as a senior
11:49:59 15 executive at Walgreens?

11:50:01 16 **A** Yes.

11:50:01 17 **Q** Do you see that it says, "We do not want our
11:50:07 18 pharmacists to feel that they must disregard their
11:50:10 19 professional judgment or to fail to follow our established
11:50:16 20 GFD guidelines"?

11:50:17 21 **A** Yes.

11:50:18 22 **Q** Okay. And I'll call out the bottom paragraph on this
11:50:28 23 page.

11:50:30 24 Do you see that it says, "In our review of this
11:50:33 25 matter, we have found no evidence of a systemic issue

11:50:36 1 regarding GFD policy compliance. Further, we have not found
11:50:40 2 any adverse employment-related action taken against you in
11:50:44 3 regards to your decision as a pharmacist."

11:50:46 4 Do you see that?

11:50:47 5 **A** Yes.

11:50:47 6 **Q** Okay. Now I'd like to you turn to page 18 of this
11:50:50 7 document. And I'll direct your attention to the March 16,
11:50:57 8 2018, e-mail from Tiffany Huynh.

11:51:15 9 Do you see that towards bottom of the page?

11:51:16 10 **A** I do.

11:51:17 11 **Q** She says, "Below is a recap of the phone conversation
11:51:20 12 with the pharmacist who complained, Serge Ahmad."

11:51:25 13 Do you see that?

11:51:26 14 **A** Yes.

11:51:27 15 **Q** So she's providing a recap of her conversation.

11:51:30 16 Do you know whether Mr. Ahmad was the asset protection
11:51:33 17 manager involved?

11:51:35 18 **A** I do not.

11:51:38 19 **Q** And you can see the statement that was provided by
11:51:43 20 Ms. Huynh based on her conversation with Mr. Ahmad and the
11:51:46 21 pharmacist.

11:51:46 22 Do you see that?

11:51:47 23 **A** Yes.

11:51:48 24 **Q** All right. Now if you'd turn back one page to the
11:51:50 25 bottom of page 17. And the March 23, 2018, note at the

11:51:57 1 bottom of the page -- I'll call it out.

11:52:18 2 I'll see if I can find it on my hard copy. That might
11:52:21 3 be easier.

11:52:37 4 I apologize. It was the next page in the same note.

11:52:40 5 The bottom of the note I wanted to call your attention to.

11:52:47 6 Do you see that it says, "JSB said that we should go

11:52:51 7 back to the pharmacist and offer one last opportunity to

11:52:53 8 provide more details regarding his complaint. If he does

11:52:57 9 not want to provide any more detail and just leave it at the

11:53:00 10 information in the letter, that is fine."

11:53:03 11 Do you see that?

11:53:03 12 **A** Yes.

11:53:03 13 **Q** Then the next note up on the page from April 4, do you
11:53:26 14 see that?

11:53:26 15 **A** Yes.

11:53:40 16 **Q** It includes an e-mail from Serge Ahmad dated March 20,
11:53:44 17 2018, at 4:58 p.m.

11:53:46 18 Can you see that?

11:53:47 19 **A** Yes.

11:53:47 20 **Q** It says that "The pharmacist complaining complained
11:53:51 21 about security concerns due to recent robberies."

11:53:54 22 Do you see the reference to recent robberies in the
11:53:56 23 area?

11:53:56 24 **A** Yes.

11:53:56 25 **Q** Mr. Ahmad says, "I advised I would partner with you

11:54:11 1 and ensure we have assessed the store from a security
11:54:14 2 perspective to ensure we have proper measures in place if it
11:54:17 3 is needed. Let me know if you want to discuss off-line, but
11:54:20 4 I want to just make sure we do our due diligence in
11:54:22 5 addressing this part of the complainant's concern."

11:54:28 6 Do you see that?

11:54:29 7 **A** Yes.

11:54:29 8 **Q** Now, I'd like you to take a look at the response just
11:54:32 9 above the e-mail I just called out for you, and I'll leave
11:54:35 10 it so you can see both.

11:54:36 11 Do you see the response where it says, "While
11:54:41 12 discussing personal safety with team members, no one
11:54:45 13 mentioned any safety concerns. I drove around the
11:54:49 14 store/neighborhood, appears to be some areas may be lower
11:54:52 15 income, very little graffiti."

11:54:54 16 Do you see that?

11:54:55 17 **A** Yes.

11:54:55 18 **Q** Okay. If you take a look at page 15, do you see the
11:55:05 19 e-mail on --

11:55:06 20 MR. WEINBERGER: Your Honor, can we have a
11:55:11 21 side bar?

11:55:12 22 (At side bar at 11:55 a.m.)

11:55:25 23 MR. WEINBERGER: Your Honor, we are so far
11:55:27 24 afield from anything that occurred during recross.

11:55:33 25 MS. SWIFT: Mr. Lanier asked all sorts of

11:55:35 1 questions about this very document. I'm allowed to
11:55:36 2 redirect, Your Honor.

11:55:37 3 MR. WEINBERGER: Only if it's relevant to the
11:55:39 4 case or --

11:55:40 5 THE COURT: Yeah, the stuff about safety
11:55:42 6 concerns I don't think is relevant, Ms. Swift, so I -- I
11:55:49 7 think -- I'm not sure there's anything more relevant than
11:55:53 8 you've got here, so -- I'm not saying you can't ask any more
11:55:57 9 questions, but if I don't see the relevance, I'll sustain
11:56:02 10 it -- I'll sustain objections.

11:56:04 11 MS. SWIFT: All right, Your Honor. Thank you.

11:56:18 12 (In open court at 11:56 a.m.)

11:56:26 13 BY MS. SWIFT:

11:56:26 14 Q All right, Ms. Polster, turn to page 5 of this
11:56:30 15 investigation file if you would, please.

11:56:31 16 A Okay.

11:56:32 17 Q Do you see the e-mail from Tiffany Huynh again dated
11:56:49 18 August 27?

11:56:50 19 A Yes.

11:56:52 20 Q I'll call out two of the paragraphs there.

11:57:02 21 "I wanted to let you know that I was able to address
11:57:07 22 District 254 managers and RXMs at a town hall meeting on
11:57:12 23 8/23/18. We discussed that each RPH is responsible for
11:57:15 24 making sure that GFD guideline is used for controlled
11:57:19 25 substance and proper documentation is crucial when

11:57:22 1 clinical/professional judgment is called upon."

11:57:25 2 Do you see that?

11:57:26 3 **A** Yes.

11:57:26 4 **Q** Do you know if you're addressing District 254 managers
11:57:32 5 and RXMs -- that's pharmacy managers, correct?

11:57:35 6 **A** Yes.

11:57:36 7 **Q** Roughly how many people that might be?

11:57:39 8 **A** Depending on the size of the district, probably 40 to
11:57:45 9 60.

11:57:46 10 **Q** The next paragraph says, "As for managers, I stressed
11:57:50 11 the importance of providing support to our pharmacists and
11:57:53 12 their GFD decisions. Managers are not to pressure
11:57:57 13 pharmacists in filling controlled substances if they decided
11:58:00 14 that the prescription does not meet the GFD guideline."

11:58:05 15 Is that consistent with Walgreens' policy?

11:58:06 16 **A** Yes.

11:58:06 17 **Q** All right. Changing topics again.

11:58:16 18 You were asked some questions about the control versus
11:58:23 19 noncontrol percentages in one of the Excel spreadsheets that
11:58:28 20 we talked about yesterday.

11:58:29 21 Do you remember those questions?

11:58:30 22 **A** Yes.

11:58:30 23 **Q** Did you see any cash percentages on that -- well, let
11:58:39 24 me ask it a different way.

11:58:40 25 Did you know that Carmen Catizone, when he came in and

11:58:44 1 testified to this jury, he said that 5 to 10 percent of
11:58:49 2 patients don't have insurance?

11:58:52 3 **A** Yes.

11:58:52 4 **Q** If a pharmacist is caught stealing opioids from a
11:59:07 5 pharmacy or selling them illegally out the back door, would
11:59:12 6 that pharmacist be fired immediately?

11:59:14 7 MR. WEINBERGER: Objection. Improper.

11:59:16 8 THE COURT: Sustained. Sustained.

11:59:25 9 **Q** All right. We're almost done.

11:59:28 10 You were asked questions about the kiosks or drop
11:59:33 11 boxes that Walgreens has in some of its stores for the safe
11:59:37 12 disposal of unused medications like opioids.

11:59:40 13 Do you remember those questions?

11:59:41 14 **A** Yes.

11:59:41 15 **Q** If somebody wants to figure out which Walgreens stores
11:59:51 16 have kiosks or don't have kiosks, does Walgreens provide
11:59:55 17 that information publicly on its website for patients?

11:59:58 18 **A** Yes.

11:59:58 19 **Q** Does Walgreens also provide something called
12:00:05 20 DisposeRx?

12:00:06 21 **A** Yes.

12:00:07 22 **Q** What is DisposeRx?

12:00:09 23 MR. WEINBERGER: Objection. Improper
12:00:11 24 redirection.

12:00:18 25 MS. SWIFT: It's related --

12:00:19 1 THE COURT: Sustained.

12:00:22 2 Q Does Walgreens provide other ways for patients to
12:00:25 3 safely dispose of medications in addition to the kiosks or
12:00:30 4 the drop boxes where you can drop off unused medication?

12:00:33 5 A Yes.

12:00:33 6 MR. WEINBERGER: Objection. Improper
12:00:34 7 redirect.

12:00:35 8 THE COURT: I'll allow the one question. So
12:00:36 9 she answered yes.

12:00:37 10 A Yes.

12:00:38 11 MS. SWIFT: Thank you, Ms. Polster. That's
12:00:39 12 all I have.

12:00:46 13 MR. LANIER: Am I allowed two minutes or not?

12:00:49 14 THE COURT: Well, if you take two minutes then
12:00:51 15 I've got keep going with Ms. Swift. And if there's more
12:00:56 16 questioning, I guess I'll break for lunch and have
12:00:58 17 Ms. Polster come back. If you two of you are about done,
12:01:01 18 let's --

12:01:02 19 MR. LANIER: Your Honor, I truly have two
12:01:03 20 questions I could ask right now and I'll be done.

12:01:06 21 MS. SWIFT: I object to that, Your Honor.

12:01:08 22 THE COURT: Well, that puts us two questions
12:01:09 23 back, all right?

12:01:10 24 So go ahead, two questions each. That's it.

12:01:14 25 - - - - -

12:01:15 1 RECROSS-EXAMINATION

12:01:15 2 BY MR. LANIER:

12:01:16 3 Q Question one: Every store has a checklist attached to

12:01:20 4 the refusals to fill supposedly.

12:01:21 5 Did you see how many were missing in your box?

12:01:23 6 A I did not look through every one of those.

12:01:25 7 Q Question two: Handing back prescriptions.

12:01:27 8 Did you say the law requires you to do that?

12:01:29 9 A I did not answer that.

12:01:30 10 MR. LANIER: Thank you, Judge.

12:01:32 11 MS. SWIFT: May I ask a few follow-up

12:01:33 12 questions, Your Honor?

12:01:34 13 THE COURT: Two.

12:01:43 14 - - - - -

12:01:44 15 FURTHER REDIRECT EXAMINATION

12:01:44 16 BY MS. SWIFT:

12:01:44 17 Q Ms. Polster, have you taken steps throughout your

12:01:46 18 career at Walgreens to make sure that the pharmacists and

12:01:48 19 field leaders who you oversee do what they're supposed to do

12:01:52 20 with respect to preventing diversion of controlled

12:01:54 21 substances?

12:01:54 22 MR. WEINBERGER: Objection.

12:01:55 23 THE COURT: I'll sustain that one. It has to

12:01:57 24 be two related to the two that Mr. Lanier asked.

12:02:03 25 Q Ms. Polster, did you in the examples that Mr. Lanier

12:02:06 1 showed you today see any prescription that had been filled
12:02:11 2 that you believed should not have been filled?

12:02:16 3 **A** No.

12:02:16 4 MS. SWIFT: Thank you.

12:02:18 5 THE COURT: Okay. Thank you very much,
12:02:20 6 Ms. Polster, for a long three days. So you may be excused.

12:02:26 7 We'll break for lunch. One hour, and we'll pick up
12:02:29 8 with the next witness.

12:02:30 9 Usual admonitions apply.

12:03:12 10 (The jury is not present.)

12:03:13 11 MR. LANIER: Judge, you want some more
12:03:14 12 documents?

12:03:15 13 THE COURT: No, I'm overflowing up here, so
12:03:17 14 I'm asking Robert to file them back.

12:03:20 15 MS. SWIFT: Judge, can I address something
12:03:24 16 just real quickly before we get to the documents?

12:03:27 17 I just wanted to make sure that -- I think Ms. Polster
12:03:30 18 misspoke. She said she heard Mr. Catizone's testimony. We
12:03:33 19 haven't showed her that. She absolutely hasn't seen that,
12:03:36 20 just for the record.

12:03:37 21 MR. LANIER: But you asked the question. The
12:03:39 22 question was, "Did you know" -- this is word for word. "Did
12:03:41 23 you know that Carmen Catizone when he came in here and
12:03:43 24 testified to this jury, he said that 5 to 10 percent of
12:03:48 25 patients don't have insurance?"

12:03:49 1 Answer, "Yes."

12:03:50 2 MS. SWIFT: And that's why I raised it, Your
12:03:51 3 Honor. We didn't show it to her. She hasn't seen it.

12:03:51 4 MR. WEINBERGER: So then why would you ask the
12:03:54 5 question?

12:03:54 6 THE COURT: Then why would you ask the
12:03:56 7 question, Ms. Swift? Why would you ask the question?

12:04:00 8 MS. SWIFT: I assumed she was going to say no,
12:04:02 9 Your Honor.

12:04:02 10 THE COURT: I don't know why you asked it.
12:04:03 11 You shouldn't have asked it. There was no objection. I let
12:04:05 12 the witness answer, and she answered.

12:04:08 13 So how she knows, I mean, that's what she said. How
12:04:12 14 she knows, I don't know how she knows.

12:04:14 15 MS. SWIFT: Well, I just wanted to make sure
12:04:15 16 that you understood we did not show it to her, she hasn't
12:04:18 17 read it.

12:04:18 18 MR. LANIER: And a similar objection that we
12:04:20 19 got is when Ms. Swift asked this question: "Why do you give
12:04:23 20 a prescription back to the patient when it's refused? Is it
12:04:26 21 required by law?"

12:04:28 22 We objected. Obviously it's leading. But the problem
12:04:31 23 with the leading question is, the law says they don't have
12:04:34 24 to give it back.

12:04:35 25 THE COURT: Well, she didn't answer the second

12:04:37 1 half of the question.

12:04:38 2 MR. LANIER: You're right.

12:04:38 3 THE COURT: And I could have jumped in, but
12:04:40 4 since you had objected to the question in the first place, I
12:04:44 5 didn't press it.

12:04:44 6 MR. LANIER: And you allowed me to redirect on
12:04:46 7 it.

12:04:46 8 THE COURT: Right.

12:04:47 9 MR. LANIER: So I should shut up and apologize
12:04:49 10 for taking your time. Thank you, Judge.

12:04:51 11 MS. SULLIVAN: Your Honor, there's one issue
12:04:52 12 with the next witness. I'm happy to take it up after lunch.
12:04:55 13 It will be a couple minutes.

12:04:57 14 THE COURT: I don't even know who the next
12:04:58 15 witness is at this point.

12:04:59 16 MS. SULLIVAN: Alexander.

12:04:59 17 MR. LANIER: It's Dr. Caleb Alexander, Your
12:05:02 18 Honor. I'll be glad to talk to my friend.

12:05:04 19 MS. SULLIVAN: Maybe it's not an issue and,
12:05:06 20 Your Honor, we can raise it after lunch.

12:05:08 21 THE COURT: See if you can resolve it. If
12:05:10 22 not, I'll have to take it up at 1:00.

12:05:18 23 (A luncheon recess was taken at 12:05 p.m.)

24

25

12:05:18 1 A F T E R N O O N S E S S I O N

01:04:13 2 - - - - -

01:04:13 3 (In open court at 1:04 p.m.)

01:04:16 4 MS. SWIFT: Kate Swift for Walgreens, Your
01:04:20 5 Honor.

01:04:20 6 We had an opportunity to speak with Ms. Polster at the
01:04:22 7 break, and she said that the reason she knew what
01:04:25 8 Mr. Catizone had said was because Mr. Lanier told her in a
01:04:28 9 question to her on October 19, during the cross-examination.
01:04:32 10 And I have the transcript cite here if you'd like me to read
01:04:38 11 it to you. I just wanted to make sure that the record was
01:04:40 12 clear on that.

01:04:41 13 THE COURT: All right. She has a better
01:04:44 14 memory than I did, because I hadn't remembered that
01:04:46 15 question.

01:04:47 16 MS. SWIFT: Same. I didn't either, Your
01:04:50 17 Honor.

01:04:51 18 THE COURT: All right. Well, I mean --

01:04:54 19 MS. SULLIVAN: Your Honor, one other issue
01:04:55 20 before the jury comes back related to the witness that's
01:04:59 21 coming up.

01:05:00 22 The witness who's next up is Dr. Alexander. He is a
01:05:06 23 pharmacoepidemiologist and an internal medicine doctor. He
01:05:09 24 by his own admission in his report is not an addiction
01:05:14 25 specialist, and he has an opinion in his report about the

01:05:17 1 gateway theory. Mr. Lanier advised us that he does intend
01:05:22 2 to solicit that opinion. We would object as outside of his
01:05:28 3 expertise.

01:05:28 4 THE COURT: It's a little late to have a -- I
01:05:30 5 mean, there was a -- *Daubert* challenges, Ms. Sullivan, was a
01:05:33 6 month or more than a month ago, and I addressed any
01:05:37 7 challenges in my opinion.

01:05:39 8 MR. LANIER: Yeah, and I think you covered
01:05:40 9 this, Your Honor.

01:05:41 10 MS. SULLIVAN: Your Honor, understood. You as
01:05:43 11 the gatekeeper, Your Honor, can revisit that. It's way
01:05:45 12 outside of this witness's expertise.

01:05:47 13 THE COURT: It's way too late to be making a
01:05:49 14 *Daubert* challenge.

01:05:51 15 MS. SULLIVAN: Your Honor, the other objection
01:05:53 16 is it's cumulative. They had Dr. Lembke who is in fact an
01:05:56 17 addiction specialist, and she did testify about the gateway
01:05:58 18 theory. They also frankly had every witness they've called
01:06:02 19 so far except the company witnesses talk about the gateway
01:06:04 20 theory, so we also object that it's cumulative, Your Honor.

01:06:10 21 THE COURT: Well, if there were nine or ten
01:06:12 22 experts, yes, but I don't think having the second one is
01:06:14 23 improper. So it's overruled on that basis.

01:06:17 24 MS. SULLIVAN: Thank you, Your Honor.

01:06:19 25 And we also, Your Honor, have just minor objections to

01:06:21 1 the slides that they want to use with Dr. Alexander.

01:06:26 2 MS. FIEBIG: We do. We received disclosure of
01:06:28 3 their slides and noted our objections. But in particular,
01:06:31 4 several of the slides include data from the entire United
01:06:33 5 States including rates of opioid overdose deaths through the
01:06:36 6 entire United States, which we think are irrelevant and also
01:06:39 7 prejudicial to be shown because especially as to Giant
01:06:42 8 Eagle, which is not a national company, it's going to be
01:06:44 9 highly misleading and confusing to the jury.

01:06:48 10 MR. LANIER: Your Honor, those opinions
01:06:49 11 specifically address various indicia of the epidemic,
01:06:54 12 including the proportion, the way the volume of opioids
01:07:00 13 increased nationally with the corresponding
01:07:03 14 addiction-related harms and overdose deaths, and he does it
01:07:06 15 on a national level, and then he zooms down into Ohio and
01:07:09 16 uses the national to show how consistent Ohio is in these
01:07:11 17 counties.

01:07:13 18 And so it's proper for him. It's part of what he
01:07:17 19 looks at in his opinion.

01:07:19 20 THE COURT: Well, I think anyone would. I
01:07:20 21 doubt if anyone, you know, is going to have a -- there's
01:07:25 22 been a lot of testimony about national policies, about the
01:07:30 23 national impact of the opioid crisis, and so long as it's
01:07:35 24 specifically tied to an opinion as to these counties, I'll
01:07:40 25 allow it.

01:07:42 1 MS. FIEBIG: Right. And there are slides
01:07:43 2 specifically about these counties. The ones that we object
01:07:46 3 to are the ones that are not.

01:07:48 4 THE COURT: I understand that. But it can't
01:07:49 5 pull them out of the blue. He's got to explain the basis
01:07:52 6 for his opinions.

01:07:53 7 MS. FIEBIG: Right, which are separate and
01:07:55 8 apart from the national statistics.

01:07:56 9 THE COURT: Well, that's what you're saying,
01:07:57 10 but if that's the case, well, maybe I'll scrutinize it, but
01:08:03 11 if it's going to be tied to an opinion on Lake and Trumbull
01:08:09 12 County, I'll allow it.

01:08:10 13 MR. LANIER: Thank you, Your Honor.

01:08:12 14 It is -- one of the Daubert tests is his findings in
01:08:15 15 our counties consistent with what you would test it against
01:08:17 16 on a national level. So it's appropriate. And we'll tie it
01:08:21 17 accordingly.

01:08:22 18 MS. FIEBIG: Then, Your Honor, our last
01:08:23 19 objection is just to one slide in particular which
01:08:25 20 references the rate of deaths from AIDS and gun violence in
01:08:32 21 the discussion relative to opioid deaths on a nationwide
01:08:34 22 basis, and we think that one is particularly inflammatory
01:08:38 23 and prejudicial.

01:08:39 24 MR. LANIER: That's no different than the
01:08:40 25 slides we've been seeing in the PowerPoints that compare all

01:08:43 1 sorts of --

01:08:43 2 THE COURT: Well, I think we've already seen
01:08:45 3 slides that either or both sides used that showed that
01:08:50 4 opioid deaths were number one -- the number one cause of
01:08:54 5 accidental deaths in the country, and there was a slide
01:08:56 6 comparing opioid deaths to automobile accidents and I think
01:09:01 7 gun violence. So the jury has seen that. I don't know --
01:09:05 8 it wasn't objected to. I can't remember if the defense, I
01:09:10 9 mean, offered it or the plaintiffs, but they've seen that.

01:09:12 10 So if it's -- if it's directly tied to an opinion on
01:09:19 11 opioid deaths, fine. If it's isolated, I mean, it's not
01:09:24 12 relevant.

01:09:26 13 So I haven't seen the slide.

01:09:28 14 MS. FIEBIG: I'm happy to show it to you, Your
01:09:29 15 Honor. Certainly Giant Eagle did not introduce any slides
01:09:32 16 relating to gun violence or AIDS deaths.

01:09:34 17 THE COURT: Well, Ms. Fiebig, it came out
01:09:38 18 through the questioning of other defendants or through the
01:09:40 19 questioning of the plaintiffs, and there was no objection --
01:09:42 20 I know there was no objection to the demonstrative. So
01:09:46 21 they've seen this information already. And it's a fact
01:09:52 22 which no one's disputing.

01:09:53 23 So, again, if it's -- does the demonstrative include
01:09:59 24 opioid deaths? If it doesn't, I don't think it's relevant.

01:10:02 25 MR. LANIER: It does, Your Honor. It came

01:10:04 1 straight from the CDC information. And what the opinion
01:10:08 2 says is -- I'll put it up if Mr. Pitts wants to --

01:10:12 3 THE COURT: I just want to make sure the slide
01:10:14 4 is tied -- contains information about opioid deaths.

01:10:17 5 MR. LANIER: Yes, it does, Your Honor.

01:10:18 6 The slide is opinion 8 from his report. It says, "In
01:10:22 7 2017 alone, an estimated 47,600 people died in the U.S. from
01:10:27 8 opioids, more than from motor vehicle accidents, suicide,
01:10:29 9 gun violence, or deaths at the peak of the AIDS epidemic."

01:10:33 10 THE COURT: All right.

01:10:34 11 MR. LANIER: And that's straight out of the
01:10:35 12 CDC.

01:10:36 13 THE COURT: All right. Well, again, the
01:10:37 14 jury's heard this or something similar. It's a fact.
01:10:42 15 There's no dispute as to it. It's accurate.

01:10:46 16 So the objection's overruled.

01:10:48 17 MS. FIEBIG: Thank you, Your Honor.

01:10:53 18 THE COURT: Okay. Anything else?

01:10:55 19 All right. We can bring them in then.

01:12:38 20 (Jury present in open court at 1:12 p.m.)

01:12:48 21 THE COURT: Okay. Good afternoon. Please be
01:12:49 22 seated.

01:12:52 23 Mr. Lanier, you may call your next witness who is
01:12:56 24 here.

01:12:56 25 MR. LANIER: Yes, Your Honor. Our next

01:12:57 1 witness is Dr. Caleb Alexander.

01:13:00 2 And Dr. Alexander, I think the judge will have you
01:13:03 3 stand.

01:13:05 4 THE COURT: Yes, sir. If you could please
01:13:06 5 stand and raise your right hand.

01:13:09 6 (Witness sworn.)

01:13:15 7 THE COURT: Okay. Please be seated, sir. And
01:13:17 8 you may remove your mask while testifying.

01:13:22 9 MR. LANIER: All right. May it please the
01:13:24 10 Court.

01:13:24 11 Ladies and gentlemen, good afternoon.

01:13:26 12 G. CALEB ALEXANDER, MD

01:13:26 13 - - - - -

01:13:26 14 DIRECT EXAMINATION

01:13:26 15 BY MR. LANIER:

01:13:27 16 Q Dr. Alexander, good afternoon.

01:13:28 17 A Good afternoon.

01:13:28 18 Q Will you please introduce yourself to the jury, tell
01:13:33 19 them your name and then we'll talk a little bit about who
01:13:36 20 you are.

01:13:36 21 A Of course. My name is Caleb Alexander. My first name
01:13:39 22 is George, so my formal name is George Caleb Alexander.

01:13:43 23 Q Nobody calls you George?

01:13:45 24 A No. I sometimes go by G. Caleb or just Caleb.

01:13:49 25 Q All right. Doctor, I call you doctor because you are

01:13:52 1 a doctor.

01:13:54 2 **A** That's true.

01:13:54 3 **Q** All right. We'll get to that in a minute, but first
01:13:57 4 let me give you a road map of where we're going.

01:14:00 5 Background, work, and findings. Okay?

01:14:02 6 **A** Looks great.

01:14:03 7 **Q** And it is 1:14 p.m. right now. The goal: I'm going
01:14:09 8 to pass you by 2:00. All right?

01:14:11 9 **A** Okay.

01:14:12 10 **Q** Tomorrow. No, I'm joking. I'm joking.

01:14:17 11 MR. LANIER: I'm joking, Your Honor.

01:14:19 12 **Q** Today, all right? So let's get moving.

01:14:21 13 First of all, you are -- tell the jury just what it is
01:14:26 14 you do for a living.

01:14:27 15 **A** Well, I'm an epidemiologist or the formal field is
01:14:32 16 pharmacoepidemiology. And so that's the study of the use
01:14:35 17 and safety and effectiveness of prescription drugs in large
01:14:39 18 populations.

01:14:43 19 **Q** All right. Epidemiology, use and safety and
01:14:54 20 effectiveness of drugs in large populations.

01:14:56 21 **A** Correct.

01:14:56 22 **Q** Give the jury an example of one of the most famous
01:15:01 23 times that an epidemiologist did something big.

01:15:05 24 **A** Well, in my field, some of the most important work
01:15:09 25 that we do is to study using large databases particularly

01:15:14 1 safety concerns or particular questions about how uses of
01:15:19 2 medicines have changed over time. And these have effects
01:15:24 3 for thousands or millions of people depending upon the drug.

01:15:27 4 So, for example, looking at the potential cardiac
01:15:33 5 risks associated with a medicine like Ibuprofen can have
01:15:38 6 applications for millions of Americans, so that's sort of
01:15:41 7 the work that we do.

01:15:43 8 **Q** Well, epidemiology -- by the way, you and I have had a
01:15:46 9 chance to visit for, I don't know, 30, 45 minutes at least
01:15:49 10 before your testimony. Is that right?

01:15:50 11 **A** Yes.

01:15:52 12 **Q** You've been in town thinking you were going to take
01:15:55 13 the stand a couple of days, but we visited two nights ago or
01:15:58 14 something; is that right?

01:15:59 15 **A** Correct.

01:15:59 16 **Q** All right. In that regard, I did not ask you, but my
01:16:05 17 memory tells me that somewhere over in England epidemiology
01:16:11 18 had some start with poisoned water or people getting some
01:16:14 19 sickness or something.

01:16:15 20 Do you know anything about that or is that just in my
01:16:17 21 memory bank?

01:16:18 22 **A** Well, no, that's true as well. I mean, historically,
01:16:21 23 some of the most important work that epidemiologists have
01:16:24 24 done is to identify the determinants of infectious diseases.

01:16:33 25 So I think there was a very famous case that you may

01:16:35 1 be alluding to or referring to that was focused on trying to
01:16:38 2 figure out why people were getting sick in England, a
01:16:41 3 cluster of illnesses were occurring. And I think that
01:16:44 4 ultimately it was figured out that this was from the spread
01:16:46 5 of infection that was occurring, what, on the handle of a
01:16:50 6 water pump or something like that.

01:16:54 7 **Q** Yeah, okay, good, I'm glad that -- now, you've got,
01:16:57 8 like most professionals in your business, you've got what in
01:17:00 9 Latin means what's around your life, the curriculum vitae,
01:17:06 10 but it's basically sophisticated for a resume.

01:17:10 11 Is that right?

01:17:11 12 **A** Yes.

01:17:11 13 **Q** All right. And if I put your resume, and it's
01:17:17 14 demonstrative 40 for the record, if I put your CV or your
01:17:22 15 resume up here, it's got you as an MD.

01:17:24 16 Does that mean you're a medical doctor?

01:17:26 17 **A** Yes.

01:17:26 18 **Q** You went to medical school?

01:17:29 19 **A** I did.

01:17:29 20 **Q** Where did you go to medical school?

01:17:30 21 **A** I went to Case Western Reserve University.

01:17:35 22 **Q** As in down the road?

01:17:37 23 **A** Yes.

01:17:37 24 **Q** All right. If we look at your education and training,
01:17:44 25 you've got it looks like a bachelor's degree from the

01:17:49 1 University of Pennsylvania.

01:17:51 2 **A** Yes, that's right.

01:17:51 3 **Q** And then Case Western Medical School.

01:17:56 4 Then internal medicine. Can you explain what it means
01:17:59 5 to be an internal medicine doctor?

01:18:01 6 **A** Well, internal medicine doctors provide general
01:18:05 7 medical care for adults. And so I'm trained as a general
01:18:09 8 internist, so after that training at the University of
01:18:13 9 Pennsylvania, rather than specializing and becoming a heart
01:18:16 10 doctor, a cardiologist, a nephrologist, a kidney doctor, I
01:18:23 11 stayed as a generalist.

01:18:25 12 So I'm a primary care doctor for adults, and I
01:18:28 13 continue to provide primary care for about 250 or 300
01:18:31 14 individuals in the city of Baltimore.

01:18:33 15 **Q** So you actually write prescriptions for people?

01:18:35 16 **A** I do.

01:18:36 17 **Q** Do you write opioid prescriptions?

01:18:39 18 **A** I do. I use them sparingly, but I certainly prescribe
01:18:46 19 opioids on occasion, yes.

01:18:48 20 **Q** All right. And when you do so, do you do it within
01:18:51 21 the professionalism and care of your medical training?

01:18:56 22 **A** Yes, I do.

01:19:00 23 **Q** All right. If we continue to look, you're board
01:19:02 24 certified in internal medicine; is that right?

01:19:05 25 **A** Correct.

01:19:05 1 **Q** And what does it mean to be board certified?

01:19:07 2 **A** Well, there are standard tests that physicians are

01:19:15 3 allowed or have the opportunity to take that allow for them

01:19:20 4 to obtain board certification. And so you can think of it

01:19:23 5 just like a standard. It doesn't -- you know, so it just

01:19:28 6 designates that I've taken a test that's a comprehensive

01:19:31 7 test to assess my ability to provide medical care. But you

01:19:38 8 don't have to be board certified in order to practice. I

01:19:41 9 believe that that's the case. I believe that board

01:19:43 10 certification isn't required for practice, but it's -- you

01:19:47 11 know, it's a measure of credibility to some degree, I

01:19:51 12 suppose.

01:19:51 13 **Q** All right. And if we look at the professional

01:19:55 14 experience, you've done work at the Veterans Affairs

01:20:01 15 Hospital Division of Medicine at the University of Chicago.

01:20:06 16 A number of different places; is that fair to say?

01:20:09 17 **A** Yes.

01:20:10 18 **Q** And as we continue, it looks like you have been at

01:20:14 19 Johns Hopkins for some time now. Is that right?

01:20:16 20 **A** Yes, I believe coming on a decade, 10 years.

01:20:18 21 **Q** And can you explain, please, what it means to be the

01:20:22 22 founding codirector for the Johns Hopkins Center for Drug

01:20:28 23 Safety and Effectiveness?

01:20:32 24 **A** Well, universities often have centers that are

01:20:36 25 opportunities for faculty to provide leadership and momentum

01:20:40 1 for a particular area of study. And so as part of my
01:20:43 2 transition from Chicago to Baltimore to Johns Hopkins, I was
01:20:51 3 offered the opportunity to develop and build a center for
01:20:54 4 drug safety and effectiveness.

01:20:56 5 And so this is simply a group of faculty and students
01:21:00 6 that have a committed interest and dedication to doing this
01:21:05 7 type of work, understanding the use and safety and
01:21:08 8 effectiveness of drugs in large populations.

01:21:11 9 **Q** All right. A couple of things that I want to add as
01:21:18 10 we prove you up under the record to be an expert for the
01:21:20 11 questions I'm going to ask you later.

01:21:21 12 You've served on a number of noncommercial advisory
01:21:25 13 boards.

01:21:26 14 What does that mean, noncommercial?

01:21:29 15 **A** That means that these were -- these were not advisory
01:21:31 16 boards for companies, for for-profit companies. They were
01:21:36 17 advisory boards, for example, for the Food and Drug
01:21:40 18 Administration or for a professional society or for the
01:21:43 19 like.

01:21:43 20 **Q** So the FDA has had you on advisory committees?

01:21:47 21 **A** Yes. I've both served on several and I've also served
01:21:50 22 as the chairperson of one particular committee most recently
01:21:57 23 that reviewed the Alzheimer's drug aducanumab.

01:22:02 24 **Q** Is that the one where they voted and like not
01:22:04 25 everybody voted to approve it?

01:22:06 1 **A** I believe 10 or 11 of us voted that there was not
01:22:10 2 evidence to approve the drug, and one of the 11 abstained
01:22:14 3 from voting.

01:22:18 4 **Q** So you're one of the 10 that voted uh-uh?

01:22:22 5 **A** I was.

01:22:22 6 **Q** You've also spent some time testifying in
01:22:28 7 nonlitigation situations. Is that fair to say?

01:22:31 8 **A** Yes, that's true.

01:22:32 9 **Q** And you've testified in front of the FDA?

01:22:38 10 **A** Yes, I have.

01:22:38 11 **Q** Veteran Affairs Committee at the U.S. Senate?

01:22:44 12 **A** Yes.

01:22:45 13 **Q** CDC?

01:22:46 14 **A** Yes.

01:22:46 15 **Q** Committee on Health and Government Operations in
01:22:49 16 Maryland?

01:22:49 17 **A** Yes.

01:22:50 18 **Q** National Academy of Sciences?

01:22:54 19 **A** Yes.

01:22:55 20 **Q** Now, there did you testify about the regulation of
01:22:58 21 opioids?

01:22:59 22 **A** Yes, I did.

01:23:00 23 **Q** And have you testified -- this is going back to
01:23:09 24 2016 -- on prescription opioids?

01:23:11 25 **A** Yes, I did.

01:23:11 1 **Q** Did you testify going as far back as 2012 on drug
01:23:16 2 labeling for opioids?

01:23:17 3 **A** Yes, I did.

01:23:17 4 **Q** 2017, did you testify in front of the U.S. House of
01:23:21 5 Representatives on the opioid epidemic?

01:23:24 6 **A** Yes, I did.

01:23:27 7 **Q** In addition to that, are you a peer reviewer where you
01:23:32 8 read scholastic articles to see if they're academically
01:23:36 9 rigorous enough for publication?

01:23:40 10 **A** Yes, I have, and I continue to do so.

01:23:43 11 **Q** And you've got a bunch of journals here where you've
01:23:46 12 done it on page 3 of your CV; is that right?

01:23:49 13 **A** Yes.

01:23:50 14 **Q** And a bunch more journals on page 4. True?

01:24:01 15 **A** Yes.

01:24:02 16 **Q** I'm sorry. I can't see that far without my glasses,
01:24:07 17 so I have no clue what you even look like right now, okay?
01:24:12 18 But I can't see this if I put on my glasses, so I've got to
01:24:17 19 hear you, all right?

01:24:18 20 **A** Absolutely.

01:24:18 21 **Q** I'm sorry.

01:24:19 22 Now, in addition to that, you've got a section on
01:24:25 23 honors and awards. I know it's probably not your preference
01:24:28 24 to dwell on that, but it's helpful for the jury to hear some
01:24:35 25 of it. Okay?

01:24:38 1 **A** Okay.

01:24:39 2 **Q** Let's see what might seem relevant.

01:24:42 3 2017, American Society of Health-System Pharmacy, Drug
01:24:51 4 Therapy Research Award for mentored research and a CV
01:24:57 5 publication.

01:24:58 6 Can you explain what that is, please?

01:25:00 7 **A** Well, this was an award that was received for work
01:25:03 8 that I did with a master's or doctoral student or possibly a
01:25:08 9 fellow, some trainee at Johns Hopkins. I would have to look
01:25:12 10 at my CV to recall the specific publication, but it appears
01:25:16 11 that we could do that if that was helpful.

01:25:18 12 **Q** All right. In addition to that, you have been elected
01:25:20 13 a fellow of the American College of Physicians.

01:25:25 14 What is that, sir?

01:25:26 15 **A** Well, the American College of Physicians is a
01:25:29 16 professional society for physicians, so it provides
01:25:33 17 opportunities for continuing medical education and for
01:25:37 18 professional development, for professional networking.

01:25:44 19 And to be elected fellow is simply a designation of my
01:25:48 20 commitment to the field and my contributions to the field.

01:25:50 21 **Q** And do you have over 300 publications that have been
01:25:54 22 peer reviewed?

01:25:57 23 **A** I believe so, but I would want to look at my CV to be
01:26:01 24 sure what the current count is.

01:26:03 25 **Q** All right. I'll throw up on your -- on the ELMO

01:26:09 1 page -- or Wolfe Vision page 32, it looks to me like you've
01:26:13 2 got at least 320. Hold on. 333.

01:26:21 3 **A** Yes. So some of those are under development or under
01:26:23 4 review, so essentially if you go back lower numbers, you'll
01:26:27 5 hit the ones that are not under review but, rather, pending
01:26:33 6 publication. And that's where I would typically stop and
01:26:36 7 consider my publications to end. So I believe it would be
01:26:38 8 fewer than 314.

01:26:41 9 **Q** Okay. So in other words, some of these are under --
01:26:46 10 like, number 303 is under revision.

01:26:49 11 What does that mean?

01:26:50 12 **A** Well, I mean, 302 is where I would typically stop if I
01:26:54 13 was describing publications because that is a paper that has
01:26:56 14 been accepted and is forthcoming.

01:26:59 15 303 and onward are papers that are under review by
01:27:04 16 journals, so we've sent them to the journal, but the
01:27:07 17 journals don't respond immediately. I mean, we can wait
01:27:10 18 weeks or sometimes months to hear back from the journals.

01:27:14 19 And so there's a fairly long process sometimes of
01:27:17 20 getting these things published.

01:27:20 21 **Q** Fair enough.

01:27:20 22 Now, in addition to this type of background, you've
01:27:23 23 got a couple more things that are relevant in this case.
01:27:26 24 First of all, the first job you ever had.

01:27:36 25 **A** Well, I mean, the first job was probably a paperboy.

01:27:39 1 **Q** Second job you ever had.

01:27:42 2 **A** The second may have been working at Giant Eagle, so
01:27:45 3 there was a Giant Eagle just down the street from where I
01:27:48 4 lived, and I bagged groceries there for a while as a
01:27:51 5 teenager.

01:27:52 6 **Q** So you actually worked at -- Ms. Sullivan's going to
01:27:57 7 take the lead in cross-examining you, I believe. She's the
01:27:59 8 Giant Eagle attorney that will be doing so. She's going to
01:28:04 9 be cross-examining someone who knows how to bag groceries;
01:28:08 10 is that right?

01:28:08 11 **A** I'm prepared if there's questions about, you know,
01:28:10 12 where the cans go.

01:28:12 13 **Q** Not on top of the bread.

01:28:15 14 **A** Right.

01:28:15 15 **Q** All right. Sir, you also do work with a company you
01:28:21 16 founded called Monument Analytics, right?

01:28:27 17 **A** Yes, I cofounded the company.

01:28:29 18 **Q** And that is the way we got to you in the opioid world.
01:28:35 19 With Monument Analytics, how much do you charge
01:28:39 20 personally per hour for your work?

01:28:42 21 **A** \$900 per hour.

01:28:44 22 **Q** And you've got five staff people who work as well; is
01:28:47 23 that correct?

01:28:47 24 **A** Well, the company has probably 15 to 20 people, but
01:28:51 25 about five of the 20 work on litigation-related matters

01:28:55 1 primarily.

01:28:57 2 Q And you are involved in this case in ways far beyond
01:29:03 3 what we're doing in the courtroom today; is that fair?

01:29:07 4 A Yes, that's true.

01:29:08 5 Q And the reason I say that is, you're getting paid
01:29:10 6 today for this work, but you've also been doing much more
01:29:14 7 extended work beyond this, right?

01:29:18 8 A Yes, I think that the company, Monument Analytics, and
01:29:23 9 I have been involved in about a dozen opioid-related cases.
01:29:28 10 Several of these are in Federal Court in the -- you know,
01:29:31 11 the multidistrict litigation, and then others are in various
01:29:35 12 state courts.

01:29:36 13 Q Okay. And you put it all together, Monument Analytics
01:29:41 14 has billed in all of those litigations, not simply this
01:29:45 15 case, something in the range of how much?

01:29:46 16 A I believe for the -- all of the litigation for the
01:29:51 17 entire company, I believe about \$6 million over about four
01:29:55 18 or five years.

01:29:56 19 Q All right. And that's everybody that works at the
01:29:58 20 company?

01:29:58 21 A Correct.

01:29:59 22 Q And it's based on the billable time and those rates?

01:30:04 23 A Correct, although the other people's rates, they're
01:30:07 24 generally master's and doctorally trained people, and their
01:30:11 25 rates are typically between 325 and \$500 an hour.

01:30:15 1 **Q** All right. With that background information, I'd like
01:30:18 2 to talk to you about the work you've done. And I want to
01:30:23 3 try to tailor it down to the work you've done for this case,
01:30:27 4 not the work you've done in other cases, though of course
01:30:30 5 you may get cross-examined on any of that. Right?

01:30:32 6 **A** Of course.

01:30:32 7 **Q** All right. So the work in this case, what did we ask
01:30:36 8 you to do?

01:30:39 9 **A** I was asked to evaluate whether I felt there was an
01:30:42 10 epidemic, an opioid epidemic, in Lake and Trumbull Counties,
01:30:48 11 and, if so, whether I felt and how I felt further harms
01:30:51 12 could best be prevented.

01:31:02 13 **Q** So as you tried to assess the epidemic in Lake and
01:31:07 14 Trumbull County, how did you go about doing that?

01:31:11 15 Explain to the jury the work that you did in that
01:31:14 16 regard, and then we'll look at your findings.

01:31:16 17 **A** Well, the work relied upon my reviewing a large number
01:31:23 18 of materials from many different sources, and this included
01:31:25 19 information about the companies -- about the counties from
01:31:31 20 the Federal Government. So, for example, the Centers For
01:31:36 21 Disease Control publishes overdose data that's available at
01:31:39 22 the county level.

01:31:42 23 It also involved my reviewing information about the
01:31:45 24 counties produced by the state, so the State of Ohio
01:31:48 25 produces county-specific reports, and so these included, for

01:31:52 1 example, reports from the Ohio Department of Public Health
01:31:59 2 and also the Hospital Council of Northwest Ohio, and I also
01:32:04 3 reviewed a lot of materials from the counties themselves,
01:32:07 4 information from the Lake County ADAMHS Board and the
01:32:13 5 Trumbull County Mental Health and Recovery Board.

01:32:15 6 I reviewed information from the -- I reviewed
01:32:19 7 information from the counties that was generated such as the
01:32:23 8 community health improvement plans and community health
01:32:26 9 assessments. And I also spoke with people that are experts,
01:32:30 10 local experts, individuals such as Lauren Thorpe and
01:32:38 11 April Caraway and Kim Fraser.

01:32:40 12 And so it was through -- and then I used also
01:32:44 13 knowledge from the peer-reviewed literature. There are
01:32:47 14 many, many hundreds of studies, thousands of studies about
01:32:49 15 the opioid epidemic. And just because they may not have
01:32:54 16 taken place in these two counties doesn't mean that they're
01:32:57 17 not relevant. And so I used these and those other sources
01:33:02 18 of information in order to reach the conclusions that I've
01:33:05 19 reached.

01:33:06 20 **Q** The jury's going to hear from Ms. Fraser probably
01:33:09 21 tomorrow if timing works out right, but in addition to her
01:33:16 22 and the others that you have visited with, I assume that
01:33:19 23 means you've also been to the counties.

01:33:21 24 **A** I have. You know, I lived for four years in Cleveland
01:33:28 25 Heights, which I believe as the crow flies is less than 10

01:33:32 1 miles from Lake County. So I spent time in the county in
01:33:36 2 the context of being so close for four years during my
01:33:40 3 medical school training here. I also grew up in Pittsburgh
01:33:44 4 and commuted from Pittsburgh to Cleveland regularly, and
01:33:48 5 that would take me through Trumbull County during that
01:33:51 6 transit.

01:33:51 7 **Q** So but you're not a Steelers fan, I'm assuming?

01:33:55 8 **A** You know, it's disappointing a bit. I grew up in
01:33:58 9 Pittsburgh, went to med school in Cleveland, and now live in
01:34:01 10 Baltimore, so I try not to talk football when I can avoid
01:34:05 11 it.

01:34:08 12 **Q** But tonight we're all Browns fans, right?

01:34:11 13 **A** Fair enough.

01:34:11 14 **Q** All right. Any other significant work that you have
01:34:18 15 done to come to your conclusions?

01:34:20 16 **A** Well, there are -- again, there are additional reports
01:34:30 17 and white papers that may not be published in the
01:34:33 18 peer-reviewed literature.

01:34:34 19 So whether I say peer-reviewed literature, that's sort
01:34:38 20 of -- that's a subset of all the information that's out
01:34:41 21 there. That's essentially academic papers that are
01:34:43 22 published. And there are additional reports that are
01:34:47 23 valuable and that I cite in my report that I submitted for
01:34:51 24 this case that may not be published in the peer-reviewed
01:34:54 25 literature but are still relevant.

01:34:56 1 But I think this captures it really. There's
01:34:59 2 information about the counties from the Federal Government,
01:35:03 3 there's information about the counties from the State,
01:35:05 4 there's information about the counties that the counties
01:35:08 5 themselves have produced, and then there's just the sort of
01:35:11 6 the foundation of knowledge about the opioid epidemic.

01:35:16 7 And unfortunately, there are some striking
01:35:21 8 similarities, even though the counties are all different and
01:35:24 9 have their unique fabric, there are some real similarities
01:35:27 10 when you look at the epidemic in Trumbull County versus when
01:35:30 11 you look at it in another county, for example, in West
01:35:34 12 Virginia or another part of the country.

01:35:36 13 **Q** Okay. I'm going to be asking you some opinions. When
01:35:42 14 I ask you an opinion, I'll ask you to limit your answer to
01:35:47 15 only what is reasonably probable within the ambit of your
01:35:54 16 expertise and profession. Okay?

01:35:57 17 **A** Yes, I'll do my best to do that.

01:35:59 18 **Q** Yeah. And in fact, you've got to do that because the
01:36:02 19 law says that the jury can only rely upon your opinions that
01:36:06 20 are reasonably probable. All right?

01:36:08 21 **A** Yes.

01:36:08 22 **Q** Thank you.

01:36:10 23 And in that regard, I don't know how the judge will
01:36:13 24 charge the jury, but I suspect two things --

01:36:17 25 MS. SULLIVAN: Objection, Your Honor.

01:36:20 1 MR. LANIER: I'm just framing my question for
01:36:22 2 him, Your Honor. And I don't want to say --

01:36:23 3 THE COURT: Let's hear the question.

01:36:26 4 MR. LANIER: Yeah.

01:36:27 5 **Q** Sir, are you prepared to answer a question if the
01:36:31 6 issue arises, is there an epidemic related to opioids in
01:36:41 7 Lake and Trumbull Counties?

01:36:43 8 MS. SULLIVAN: No objection, Your Honor.

01:36:46 9 **A** Yes, I am prepared to answer that question.

01:36:48 10 **Q** And then the second question I want to know if you can
01:36:50 11 answer is, is there something that can be done about it? In
01:36:57 12 other words, are we stuck with it or can we do things to
01:37:00 13 make the world a better place in these counties vis-à-vis
01:37:02 14 the epidemic?

01:37:07 15 **A** If I'm asked, I'm prepared to answer that question as
01:37:11 16 well.

01:37:11 17 **Q** All right. So with a focus on those two issues of
01:37:17 18 your work, I'd like to talk to you about your findings now,
01:37:21 19 the final stop on the road. Okay?

01:37:23 20 **A** Yes.

01:37:23 21 **Q** You produced a report, correct?

01:37:30 22 **A** Yes, I did.

01:37:30 23 **Q** And you've given a deposition so that you could be
01:37:36 24 questioned on your report, fair?

01:37:37 25 **A** Yes.

01:37:37 1 **Q** I have taken from your report several of your
01:37:42 2 opinions, I've provided these slides to opposing counsel.
01:37:46 3 I'd like to put them on the overhead and ask you whether or
01:37:50 4 not they are your opinions and then have you explain them.
01:37:52 5 Okay?
01:37:53 6 **A** Yes.
01:37:53 7 **Q** Opinion 1 that we gleaned from your report, "There is
01:37:59 8 an opioid epidemic in Lake and Trumbull Counties."
01:38:02 9 Is that your opinion?
01:38:04 10 **A** Yes, it is.
01:38:04 11 **Q** And what do you base -- I mean, why? Tell us why.
01:38:09 12 **A** Well, I base that on the -- broadly on the information
01:38:14 13 on the -- on the information that I reviewed and that I
01:38:18 14 described. But specifically, the sorts of measures or the
01:38:24 15 sorts of indications that there's an epidemic are things
01:38:27 16 like rates of overdose death, for example, that have
01:38:30 17 increased from, say, 12 to 15 in Lake and Trumbull Counties,
01:38:37 18 you know, 15 years ago, plus or minus, to as high as, in
01:38:43 19 Trumbull County, 100 to 120 overdoses a year, and in Lake
01:38:51 20 County, 80 to 90 overdoses a year.
01:38:55 21 So when you have an increase of that magnitude, this
01:39:00 22 is one of the hallmarks and something that we see in
01:39:02 23 communities around the country as well as in these two
01:39:06 24 communities.
01:39:08 25 A second point. The other measures of harms that are

01:39:13 1 occurring from opioids, so, for example, rates of emergency
01:39:18 2 department utilization that has increased over time or
01:39:23 3 strains on the child welfare system where reports from the
01:39:27 4 Ohio, you know, Child and Family Services association or
01:39:35 5 agency suggest marked increases or marked strains in the
01:39:40 6 child welfare system related to opioids, increases or high
01:39:47 7 rates of nonmedical opioid use.

01:39:49 8 So in the community health improvement plans or
01:39:53 9 community health assessments, for example, in Trumbull
01:39:56 10 County, you have estimates that as many as four or five out
01:40:02 11 of a hundred adults are reporting nonmedical opioid use, not
01:40:05 12 just any drug but nonmedical opioid use within the past
01:40:10 13 year. I mean, those numbers are off the charts compared
01:40:12 14 with what one would expect historically before the epidemic.

01:40:17 15 So there are many, many different measures that you
01:40:21 16 can use to understand the harms that are occurring. And
01:40:26 17 these, by the way, they're not just -- it's not just the
01:40:28 18 data, the measures, it's also the reports on the ground.
01:40:33 19 And so experts such as those that are from the community
01:40:36 20 that I've had the opportunity to speak with, you know,
01:40:39 21 leaders of the ADAMHS board or the mental health and
01:40:45 22 recovery board have a unique vantage point and view of the
01:40:51 23 waterfront, if you will. And my discussions with them also
01:40:54 24 affirm what I would conclude or what I would be led to
01:40:57 25 conclude otherwise, which is that these are all clear signs

01:41:02 1 of a current and serious opioid epidemic in the communities.

01:41:07 2 **Q** All right. Thank you.

01:41:09 3 Opinion number 2, you have said -- well, let me ask it

01:41:16 4 this way.

01:41:16 5 Is it your opinion that the epidemic is associated

01:41:19 6 with high rates of injury and death?

01:41:21 7 **A** Yes, it is. And I believe that I spoke to this a

01:41:27 8 little bit just in the last opinion in giving some of these

01:41:31 9 measures that are maybe most compelling. You know, people

01:41:35 10 often look to the rates of overdose death, and indeed these

01:41:39 11 are stark. I gave you the numbers, but we can also talk

01:41:44 12 about this in terms of rates and the rates have increased

01:41:48 13 markedly as I write in my report, you know, eight or tenfold

01:41:55 14 increases in the rates of overdose deaths over time.

01:41:58 15 But the overdoses -- the fatal overdoses are sort of

01:42:02 16 the tip of the iceberg, and there are many other measures of

01:42:05 17 harms that I -- that are important and that we look at when

01:42:09 18 we assess whether or not there's an epidemic.

01:42:11 19 **Q** Okay. Opinion number 3, you said "Between 1992 and

01:42:21 20 2010, the volume of opioids dispensed in the U.S. increased

01:42:27 21 by approximately 400 percent."

01:42:30 22 Do you hold this opinion?

01:42:31 23 **A** Yes, I do.

01:42:32 24 **Q** And why is this an important part of your assessment

01:42:37 25 of what's going on in Lake and Trumbull Counties?

01:42:41 1 **A** Well, the same general trajectory and waves of the
01:42:48 2 epidemic that have been observed nationally have also played
01:42:51 3 out locally in the counties. And one of the important
01:42:58 4 things to understand about the origins of the epidemic is
01:43:03 5 the oversupply and overdispensing of prescription opioids
01:43:08 6 that occurred largely between these years, although
01:43:15 7 prescription opioids continued to be prescribed and
01:43:18 8 dispensed in these counties and elsewhere at rates far
01:43:22 9 higher than pre-epidemic levels.

01:43:28 10 In other words, there were huge increases over this
01:43:31 11 time period in prescription -- prescribing and dispensing,
01:43:35 12 and then around 2010, 2011 the rates plateaued. And since
01:43:40 13 then they've fortunately declined, modestly to moderately,
01:43:46 14 but they still remain very, very elevated.

01:43:50 15 And this is, you know, one of the fundamental pieces
01:43:57 16 that has driven the epidemic.

01:44:06 17 **Q** All right. Opinion number 4 we're going to set aside
01:44:11 18 for a moment and go to opinion number 5.

01:44:14 19 "Rates of addiction, overdose, and other
01:44:18 20 opioid-related harms increased in parallel."

01:44:21 21 Talk about it first in terms of generally, but then
01:44:27 22 with opinion 6 wants to talk about it in terms of Lake and
01:44:32 23 Trumbull Counties, please.

01:44:32 24 **A** Sure.

01:44:35 25 So generally, this is an important observation for

01:44:38 1 anybody that's trying to understand how the epidemic has
01:44:43 2 taken course and how it has played out. And it makes sense.
01:44:47 3 I mean, I understand that this isn't just about common
01:44:50 4 sense, but if you have products that have significant risks,
01:44:54 5 which opioids do, and you dispense them in large quantities
01:44:59 6 among a population, which has happened nationally, it stands
01:45:03 7 to reason that you're going to see increases in the sorts of
01:45:07 8 harms that are associated with the products.

01:45:11 9 And this isn't just a sort of theory. This actually
01:45:15 10 has been shown with data.

01:45:16 11 So I published a paper with others, Andrew Kolodny is
01:45:20 12 the first author, it was a review of the opioid epidemic.
01:45:24 13 And we cite a figure developed by the Centers For Disease
01:45:28 14 Control, I believe it the figure may be as something that
01:45:32 15 could be shown, but the bottom line is that if you look --
01:45:35 16 so what the CDC did was they looked at rates of prescribing
01:45:39 17 using what's called ARCOS data, data from the Drug
01:45:45 18 Enforcement Agency. They looked at rates of addiction using
01:45:47 19 a federal study, the National Survey on Drug Use and Health,
01:45:51 20 and they looked at rates of fatal overdose using data from
01:45:55 21 CDC WONDER data. That's a database on overdose.

01:45:59 22 So you have prescribing and dispensing, you have
01:46:05 23 addiction, and you have fatal overdose.

01:46:11 24 When I deliver -- when I talk and I show this graphic,
01:46:15 25 I often say you don't have to have biostatistics training

01:46:17 1 because you just look at these lines and they're all going
01:46:20 2 in parallel. So --

01:46:24 3 Q I'm interrupting you, and I apologize, but I think
01:46:27 4 this may be the graph you're talking about, and I thought if
01:46:29 5 I put it up here you might explain it to the jury. I've got
01:46:32 6 slide 11 of your sales, injuries, and deaths increased in
01:46:35 7 parallel. Is this it?

01:46:36 8 A It is, and that saves me, you know, too much further
01:46:39 9 belaboring of this point.

01:46:41 10 But this graphic on the bottom part shows the years
01:46:47 11 from 1999 to 2010. And then on the vertical part, the Y
01:46:54 12 axis, it shows rates of these problems or these events.

01:46:59 13 And the numbers don't matter too much. The rates go
01:47:03 14 from zero to 8, but you have to understand kind of -- you
01:47:06 15 know, I wouldn't worry about the rate so much as
01:47:09 16 understanding that the top line -- gosh, the colors may -- I
01:47:14 17 believe the top line is opioid sales and is actually green.
01:47:18 18 The middle line is opioid deaths and is red. And the bottom
01:47:23 19 line is opioid treatment admissions and is blue.

01:47:28 20 And so this is what I was referring to. And this is
01:47:30 21 one of many, many sources of information that show that
01:47:35 22 harms have occurred in lockstep with the volume of opioids
01:47:40 23 that have been prescribed and dispensed in the country.

01:47:47 24 Q Okay. Have I labeled those properly?

01:47:48 25 A I believe so, but, again, the colors may be a little

01:47:51 1 tricky. I think deaths is clearly in the middle, and I
01:47:53 2 believe that sales is on top, yes.

01:47:56 3 Q Yeah. And it's hard to see with this machine, but
01:48:01 4 that's -- I'll represent to you that's green.

01:48:06 5 A Thank you.

01:48:07 6 Q Uh-huh. And that is blue. See if it brings it out
01:48:11 7 better if I put a mark next to it.

01:48:14 8 All right. So what does this tell you as an
01:48:22 9 epidemiologist in terms of overall relationship between
01:48:26 10 sales, deaths, and treatment?

01:48:27 11 A Well, these data alone wouldn't -- when these sorts of
01:48:36 12 data are presented like this, these are correlated, but it
01:48:39 13 doesn't necessarily mean that they are causally related, in
01:48:45 14 other words, that one is causing the other. And so we use
01:48:48 15 many other sorts of information to understand the
01:48:53 16 relationships of cause and effect between these.

01:48:58 17 But at a minimum, when I look at this as an
01:49:01 18 epidemiologist, I say, you know, it would make sense that
01:49:04 19 opioids have significant risks that we might see the effects
01:49:08 20 of those risks as sales increase, and it would certainly
01:49:11 21 make me want to do further study to understand if these are
01:49:15 22 connected by cause and effect.

01:49:17 23 Q All right. I want to put up two other opinions of
01:49:21 24 yours and then keep -- on a national scale, and then I want
01:49:25 25 to bring it in to Lake and Trumbull County, okay?

01:49:29 1 First I'll put up opinion 7. You cited that "Between
01:49:34 2 1999 and 2009, nearly half a million individuals in the U.S.
01:49:37 3 died from an opioid overdose."

01:49:39 4 Where did you get that from?

01:49:40 5 **A** That's from the CDC, the Centers For Disease Control
01:49:44 6 and Prevention.

01:49:47 7 **Q** And then likewise you have opinion 8 that says, "In
01:49:51 8 2017 alone, 47,600 people died in the U.S. from opioids,
01:49:57 9 more than from motor vehicle accidents, suicide, gun
01:50:01 10 violence, or deaths at the peak of the AIDS epidemic."

01:50:04 11 Right?

01:50:05 12 **A** Yes.

01:50:05 13 **Q** Now, so we're clear on this, are these figures figures
01:50:12 14 that are prescription opioid deaths?

01:50:17 15 **A** No, no. These would include prescription and
01:50:21 16 nonprescription deaths.

01:50:22 17 **Q** So this includes illegal opioids, like heroin?

01:50:28 18 **A** Yes.

01:50:28 19 **Q** Fentanyl, street fentanyl?

01:50:35 20 **A** Yes.

01:50:36 21 **Q** As well as prescription opioids; is that fair?

01:50:40 22 **A** Yes.

01:50:40 23 **Q** Okay. Good.

01:50:44 24 And we'll discuss how those are related in a little
01:50:47 25 bit.

01:50:47 1 Next --

01:50:49 2 MS. SULLIVAN: Objection, Your Honor.

01:50:50 3 MR. LANIER: You're right. Sorry. I'll come

01:50:53 4 back to that.

01:50:54 5 THE COURT: I'll sustain the comment. Just

01:50:56 6 ask the questions, please.

01:50:59 7 I'm going to sustain the objection to the comment.

01:51:01 8 MR. LANIER: Got it, Judge.

01:51:03 9 BY MR. LANIER:

01:51:03 10 Q "Three Waves of the U.S. Opioid Epidemic."

01:51:09 11 Do you see this?

01:51:11 12 A Yes, I do.

01:51:12 13 Q Can you explain to us why you included this slide in

01:51:14 14 your report?

01:51:15 15 A Well, again, this is, you know, somewhat -- I think

01:51:20 16 it's important if one is trying to understand the opioid

01:51:23 17 epidemic to understand these relationships and these

01:51:28 18 patterns.

01:51:29 19 And again, this is the sort of data that while

01:51:33 20 produced by the CDC at a national level, it has also played

01:51:36 21 out at a local level in cities and counties around the

01:51:40 22 country.

01:51:40 23 Q Okay. And in that regard, let's move local.

01:51:47 24 And have you prepared a slide that gives the rates of

01:51:50 25 fatal overdoses in Lake and Trumbull Counties?

01:51:54 1 **A** Yes, I have.

01:51:55 2 **Q** And can you explain this to the jury, please?

01:51:58 3 **A** Yes. So on the bottom here we have the years from
01:52:03 4 2001 to 2019. And on the Y axis, the vertical axis, we have
01:52:11 5 the death rates per 100,000 people.

01:52:16 6 And the reason that I report rates here is because I
01:52:18 7 wanted to show the -- about how many people were dying in
01:52:22 8 the United States out of the entire United States population
01:52:28 9 on the same slide as showing how many people were dying in
01:52:32 10 Ohio out of the Ohio population and in Lake and Trumbull
01:52:39 11 Counties out of the Lake and Trumbull County population.

01:52:39 12 **Q** Right.

01:52:43 13 **A** And I couldn't do that if I just provided the raw
01:52:46 14 numbers, right, because in the United States, let's say
01:52:49 15 50,000 people died, and so if the Y axis, if the vertical
01:52:52 16 axis went up to 50,000, it wouldn't let me show the rates in
01:52:55 17 these communities.

01:52:56 18 So you can think of rate as a sort of a measure of
01:53:01 19 intensity of harm, let's call it that.

01:53:03 20 So what this shows is that the bottom flattest line is
01:53:09 21 the United States, and the red, most jagged highest line is
01:53:15 22 Trumbull County. And the continuous line that is -- that
01:53:23 23 overlaps the United States is Ohio, and it starts all the
01:53:27 24 way at 2001. And then Lake County is sort of overlaying on
01:53:33 25 top of Ohio a little bit.

01:53:36 1 **Q** All right. I'm going to -- let me make sure I've got
01:53:38 2 the lines right.

01:53:39 3 So I had done the gray line for the U.S., and then
01:53:43 4 this is the Ohio line that I'm outlining again here?

01:53:46 5 **A** Correct.

01:53:47 6 **Q** And then the red was Trumbull?

01:53:50 7 **A** Correct.

01:53:50 8 **Q** And that leaves Lake County with the blue; is that
01:53:54 9 right?

01:53:54 10 **A** Yes.

01:53:56 11 **Q** Why do you have a gap on Trumbull County?

01:54:00 12 **A** Well, these data are from the CDC WONDER data. And if
01:54:07 13 there are too few observations, the data is essentially
01:54:12 14 scrubbed. In other words, the CDC won't report -- if the
01:54:16 15 observations are too few, the CDC gets concerned about both
01:54:22 16 perhaps the stability of the estimate, but also they will
01:54:26 17 not report values that are small enough. And so that's why
01:54:34 18 there is not a continuous line for some of the counties.

01:54:38 19 **Q** All right. In addition to the graph, you've given us
01:54:41 20 some stats, some data.

01:54:44 21 Lake County. Do you know the -- you've put in your
01:54:48 22 report, "The number of individuals dying from an opioid
01:54:52 23 overdose increased from less than 10 in 2001 to 37 people in
01:54:58 24 2010."

01:55:01 25 Is that your testimony?

01:55:03 1 **A** Yes, so more than a threefold increase.

01:55:05 2 **Q** Where do you get that from?

01:55:07 3 **A** That is from data from the CDC that's available at the

01:55:11 4 county level.

01:55:14 5 **Q** Then in 2016, 90 people died of an opioid overdose.

01:55:21 6 2017, 88 people died. Same source?

01:55:26 7 **A** Correct.

01:55:26 8 **Q** Now, when we're talking about opioids, are we talking

01:55:29 9 about both prescription and illegal, nonprescription

01:55:32 10 opioids?

01:55:33 11 **A** Yes, this includes opioids of any type, whether

01:55:36 12 prescribed or illicit.

01:55:40 13 **Q** All right. So it includes prescriptions as well as

01:55:42 14 heroin and street drugs, opioids, right?

01:55:46 15 **A** Correct.

01:55:46 16 **Q** And then you've got in Trumbull County a similar set

01:55:54 17 for the statistics. "The number of individuals dying from

01:55:56 18 an opioid overdose increased from less than 10 in 2001 to 38

01:56:02 19 in 2010."

01:56:04 20 Same information about that?

01:56:07 21 **A** Yes. And I'd like to say I believe this is from CDC

01:56:12 22 WONDER, although the state also reports some information

01:56:16 23 about the number of people dying from overdose at a county

01:56:20 24 level, so I would want to consult -- you know, to review my

01:56:23 25 report to be sure about the source.

01:56:26 1 But in general, the conclusions that you reach if you
01:56:31 2 use the data that may be provided by the state or the county
01:56:33 3 versus the data that's rolled up and provided by the CDC at
01:56:37 4 a county level, the conclusions are very similar. The
01:56:40 5 numbers may differ slightly, but the overall trajectory is
01:56:45 6 the same.

01:56:46 7 **Q** And you've got -- can you give us the statistics for
01:56:49 8 2016 and 2017?

01:56:50 9 **A** In 2016, in Trumbull County, 99 people died of an
01:56:56 10 opioid overdose, and in 2017, 119 people died.

01:57:02 11 **Q** All right. You've given us a slide of many other
01:57:05 12 impacts in Lake County.

01:57:08 13 Can you explain your first data point, 354 emergency
01:57:15 14 department visits for suspected drug overdose in 2019, most
01:57:19 15 involving opioids.

01:57:19 16 **A** Yes. Well, I mentioned at the outset when I was
01:57:24 17 talking about why I determined that there was an epidemic,
01:57:27 18 that it's not just about the overdoses. Those are
01:57:31 19 important. You can't forget about them. But they're the
01:57:34 20 tip of the iceberg.

01:57:36 21 And so this is another measure. I believe the source
01:57:39 22 for this is the Ohio Department of Health that I believe
01:57:42 23 provides county level information about emergency department
01:57:46 24 visits. And so these matter. I mean, these people
01:57:51 25 fortunately may not have succumbed, but they nevertheless

01:57:54 1 are a reflection of the toll that opioids have taken.

01:57:58 2 Q There was an estimated 5,668 people suffering from
01:58:02 3 opioid addiction in Lake County.

01:58:05 4 Where did you get that from?

01:58:07 5 A I believe that's -- again, I would want to refer to my
01:58:09 6 report to be sure, but I believe that's an estimate that was
01:58:13 7 derived by Katherine Keyes, who is an epidemiologist and who
01:58:20 8 used information from a variety of sources to estimate the
01:58:24 9 total population with addiction or opioid use disorder in
01:58:29 10 Lake County.

01:58:32 11 Q And Katherine Keyes will be here to testify, we hope.
01:58:36 12 But meanwhile, you've got 28 babies born with neonatal
01:58:39 13 abstinence syndrome.

01:58:40 14 What is neonatal abstinence syndrome?

01:58:44 15 A Well, I sometimes prefer to call this neonatal opioid
01:58:48 16 withdrawal syndrome, NOWS. And you may see either. You may
01:58:53 17 see it referred to as NAS or NOWS.

01:58:57 18 These babies aren't born addicted. They don't have
01:59:01 19 addiction per say, but what they have is they have physical
01:59:05 20 dependence on opioids. And the reason they do is because
01:59:07 21 their mothers, when they were pregnant, were using opioids
01:59:11 22 and they themselves had physical dependence.

01:59:15 23 And so these are babies that are born -- again, I
01:59:19 24 would not characterize them as born addicted. I would
01:59:21 25 characterize them as born with opioid dependency.

01:59:23 1 And it's yet another measure of harms from the
01:59:26 2 epidemic.

01:59:28 3 **Q** Now, did you also give the same information or data
01:59:32 4 points for Trumbull County?

01:59:33 5 **A** Yes. And I believe there may be an additional one as
01:59:37 6 well, for example, the -- and Trumbull County is -- has had
01:59:42 7 greater intensity of harms than Lake County.

01:59:46 8 But, yes, these are similar data points with respect
01:59:51 9 to emergency department visits and, skipping to the bottom,
01:59:54 10 neonatal abstinence syndrome.

01:59:57 11 But in Trumbull, I also had the benefit of an estimate
02:00:01 12 of a number of individuals with nonmedical opioid use, and I
02:00:04 13 believe I've said this already this afternoon, but up to
02:00:08 14 four to five out of a hundred people reported having misused
02:00:12 15 are prescription opioids during the previous year.

02:00:15 16 **Q** And so to get the numbers on the record, you've got
02:00:19 17 952 emergency department visits?

02:00:21 18 **A** Yes.

02:00:22 19 **Q** An estimated 7,221 people with opioid addiction?

02:00:28 20 **A** Yes.

02:00:28 21 **Q** And 55 babies with neonatal abstinence syndrome in
02:00:34 22 2018. Fair?

02:00:35 23 **A** Yes.

02:00:35 24 **Q** Now, two last things to cover with you quickly in
02:00:41 25 regards to your opinions.

02:00:42 1 First of all, all of these drug opinions you're giving
02:00:46 2 about overdoses involving opioids and emergency department
02:00:52 3 visits involving opioids, do all of them include drugs like
02:00:56 4 heroin and street fentanyl and the nonprescription opioids?

02:01:03 5 **A** Yes, except for, you know, the statistic about
02:01:07 6 nonmedical use of opioids, of course, is referring to
02:01:10 7 prescription opioids. But the estimates that I provide for
02:01:13 8 things like emergency department visits or neonatal
02:01:18 9 abstinence syndrome, that refers to opioid of any cause. It
02:01:22 10 could be prescription, it could be nonprescription.

02:01:23 11 **Q** You gave an opinion in your report of an association
02:01:27 12 between prescription and illicit opioids. And I've taken
02:01:33 13 this language straight from your report, but would you
02:01:37 14 please explain -- read and explain the first bullet point.

02:01:41 15 **A** "There is a clear link between nonmedical use of
02:01:45 16 prescription opioids and subsequent heroin or illicit
02:01:48 17 fentanyl use; heroin and fentanyl are close chemical analogs
02:01:54 18 to prescription opioids."

02:01:56 19 **Q** Explain what you mean by this clear link.

02:01:59 20 **A** Well, this again is a sort of basic knowledge about --
02:02:02 21 that a student of the opioid epidemic has to understand or
02:02:06 22 study, which is what's the relationship between prescription
02:02:10 23 opioids on the one hand and the use of these other products
02:02:13 24 on the other.

02:02:14 25 And I would just make three points. The first is that

02:02:17 1 chemically, if you look at the structures of these drugs,
02:02:20 2 they're very similar. So if you compare the chemical
02:02:23 3 structure of heroin versus OxyContin, they are -- they're
02:02:29 4 remarkably similar. And so we shouldn't be surprised that
02:02:32 5 they have very similar effects on the brain and the body.

02:02:36 6 The second is that -- and I include in my report a
02:02:43 7 reference to a well-done paper in the New England Journal of
02:02:47 8 Medicine by Chris Jones and Grant Baldwin and Wilson Compton
02:02:51 9 that describes this. But the second point is that most
02:02:55 10 people with chronic opioid use don't go on to use heroin and
02:02:59 11 illicit fentanyl. So it's not like if you use prescription
02:03:02 12 opioids, that's it, you know, you're going to be shooting up
02:03:05 13 at some point.

02:03:06 14 Estimates range, depending upon the study, but I read
02:03:10 15 3 percent, 4 percent, 5 percent, 6 percent. So most chronic
02:03:16 16 opioid users don't go on.

02:03:17 17 However, most people that use illicit opioids, heroin
02:03:21 18 or illicit fentanyl, report prior prescription opioid use.
02:03:27 19 And there are many different studies that demonstrate this
02:03:30 20 in many different settings, ranging from studies of people
02:03:34 21 that have died from overdose.

02:03:37 22 And if you look at people that have died from overdose
02:03:40 23 from fentanyl or heroin overdose and go back and look at
02:03:44 24 their prescription records, a significant number of them
02:03:48 25 have filled prescription for opioids and also there are many

02:03:54 1 studies that ask people, you know, they look at people when
02:03:56 2 they come in the door of a treatment facility and they ask,
02:03:59 3 you know, what sort of drug are you using now, what do you
02:04:01 4 like to use, what did you used to use.

02:04:03 5 Generally the estimates are 70 to 80 percent, plus or
02:04:07 6 minus, depending upon the study, 70 to 80 percent of people
02:04:11 7 using heroin or illicit fentanyl report prior prescription
02:04:16 8 opioid use.

02:04:20 9 And I included in my report a study from Ohio that
02:04:22 10 found as many as 90 percent, nine out of ten individuals.
02:04:26 11 These were individuals with moderate or severe opioid
02:04:29 12 addiction, and these were individuals that also reported, I
02:04:32 13 believe it was nonmedical buprenorphine use.

02:04:37 14 So there's a subset of all people with addiction. But
02:04:40 15 the point is this third point is just that most people that
02:04:45 16 use heroin or illicit fentanyl in today's day and age and in
02:04:49 17 recent years have had prior prescription opioid exposure.

02:04:52 18 **Q** All right. You have covered then bullet points 2 and
02:04:55 19 3. Did you have a third thing to say or have you got all
02:04:58 20 three of them out?

02:04:58 21 **A** No, that's three. So the three are that they're
02:05:01 22 remarkably similar chemically, that most people that
02:05:04 23 start -- most people taking chronic opioids do not progress,
02:05:09 24 but that most people that are on -- that take illicit
02:05:13 25 opioids have had prior prescription opioid exposure.

02:05:16 1 Q All right. The last thing that I want -- well, I've
02:05:20 2 got to ask you two things.

02:05:21 3 One, can something be done about this? Without
02:05:30 4 detailing any costs or anything like that, just in general,
02:05:33 5 can something be done?

02:05:34 6 MS. SULLIVAN: Your Honor, I'm sorry --

02:05:35 7 THE COURT: I want to go onto the headphones,
02:05:38 8 please.

02:05:38 9 (At side bar at 2:05 p.m.)

02:05:50 10 MS. SULLIVAN: Your Honor, this is phase 2.

02:05:52 11 I'm going to object as improper in this phase of the trial.

02:05:55 12 MR. LANIER: Your Honor, the money would be
02:05:56 13 phase 2, but phase 1 I have to prove that the epidemic is
02:06:01 14 abatable, in other words, it's not just a problem that's
02:06:04 15 going to exist forever. That's a required element. So --

02:06:06 16 THE COURT: I wasn't aware of that. I don't
02:06:08 17 know any instruction.

02:06:12 18 MR. DELINSKY: Yeah, Your Honor, that's a
02:06:13 19 phase 2 issue.

02:06:14 20 THE COURT: I don't -- I want to make sure the
02:06:16 21 defendants agree on this, that there's no requirement that
02:06:20 22 this jury decide whether if they find that there's an
02:06:25 23 epidemic, that they independently find that the epidemic is
02:06:29 24 abatable.

02:06:31 25 MS. SULLIVAN: Giant Eagle agrees, Your Honor.

02:06:32 1 MR. DELINSKY: Your Honor, your prior
02:06:35 2 orders -- excuse me, Your Honor, your prior orders reserved
02:06:38 3 that issue for you if there's a phase 2.

02:06:40 4 THE COURT: I just want to make sure that the
02:06:42 5 jury doesn't have to even find that the epidemic is,
02:06:46 6 quote/unquote, abatable.

02:06:48 7 Is that right? Do all the defendants agree because I
02:06:53 8 don't want to get sandbagged here.

02:06:55 9 MS. SULLIVAN: Giant Eagle agrees, Your Honor.

02:06:58 10 THE COURT: If I don't hear from the
02:06:59 11 defendants, all of them, if I don't hear from everyone, I'll
02:07:02 12 let him ask it.

02:07:04 13 MR. STOFFELMAYR: Walgreens agrees. We're
02:07:06 14 just trying not to talk over each other.

02:07:09 15 MR. DELINSKY: Same with CVS, Your Honor.

02:07:11 16 MR. MAJORAS: Walmart also.

02:07:13 17 MR. WEINBERGER: I'm as concerned as you are,
02:07:15 18 Your Honor, because for the remedy inequity, to remedy a
02:07:25 19 public nuisance, there has to be proof that this is
02:07:30 20 abatable. And if everyone agrees, that's for the second
02:07:33 21 phase and not for this jury, which it appears to be the
02:07:38 22 case, we are satisfied.

02:07:41 23 THE COURT: All right. I think -- I believe
02:07:42 24 in phase 2, Mr. Weinberger, if there is a phase 2, you will
02:07:47 25 have to prove that it is abatable and then prove what the

02:07:51 1 abatement will require, and then monetary and nonmonetary
02:07:57 2 terms.

02:07:59 3 But all this jury has to decide is, one, is there an
02:08:04 4 epidemic now, presently, in Lake and Trumbull Counties, and,
02:08:09 5 if so, did any of these defendants substantially cause it.
02:08:18 6 And they're voting obviously independently.

02:08:21 7 But whether or if it's abatable is not for this jury
02:08:26 8 to decide.

02:08:27 9 MR. WEINBERGER: Thank you, Judge.

02:08:30 10 MR. MAJORAS: Your Honor.

02:08:31 11 THE COURT: Someone else had something?

02:08:32 12 MR. WEINBERGER: Wait, Mark.

02:08:33 13 THE COURT: Mr. Lanier, you better come back.

02:08:38 14 MR. MAJORAS: Your Honor, in your comments you
02:08:40 15 said that if it's proven that there's an epidemic. I assume
02:08:43 16 that meant if it's proven that there's a public nuisance.

02:08:46 17 THE COURT: Correct, Mr. Majoras.

02:08:46 18 MR. MAJORAS: Thank you.

02:08:50 19 THE COURT: But the public nuisance is going
02:08:52 20 to be the opioid epidemic. We're not talking about some
02:08:56 21 other public nuisance.

02:08:56 22 MR. MAJORAS: I understand, but it has to be
02:08:58 23 proved that it satisfies all the requirements of a public
02:09:01 24 nuisance, that's all.

02:09:04 25 THE COURT: Correct.

02:09:05 1 MR. MAJORAS: Thank you.

02:09:22 2 MR. WEINBERGER: Your Honor, could we go back

02:09:23 3 on the record -- I mean side bar? Excuse me.

02:09:29 4 So when Mr. Majoras just asked it has to be proved

02:09:34 5 that it satisfies all the requirements of the public

02:09:38 6 nuisance, I just want to make sure that in order to prove a

02:09:43 7 public nuisance, Walmart is not requiring us to demonstrate

02:09:46 8 that it's abatable.

02:09:50 9 MR. MAJORAS: That's correct.

02:09:50 10 MR. WEINBERGER: Okay.

02:09:50 11 THE COURT: That was my understanding.

02:09:52 12 MR. WEINBERGER: Okay. Thank you.

02:09:56 13 (In open court at 2:09 p.m.)

02:09:59 14 BY MR. LANIER:

02:10:00 15 Q Okay. Then that means the last question I need to ask

02:10:03 16 you for an opinion on is COVID-19.

02:10:05 17 Has COVID-19 had an impact on the opioid epidemic in

02:10:09 18 Ohio that you believe would be relevant to Lake and Trumbull

02:10:14 19 Counties?

02:10:14 20 A Yes, unfortunately, it has.

02:10:16 21 Q And what is the impact it has had?

02:10:21 22 A Well, there's no singular impact, but it's set back

02:10:26 23 efforts underway throughout the state to reduce further

02:10:29 24 harms.

02:10:31 25 You know, I'll mention three different reasons for

02:10:34 1 that. One is that early in the pandemic the illicit drug
02:10:40 2 supply, the black market, was disrupted, and so there was
02:10:43 3 more uncertainty about what was in a given bag. And so
02:10:47 4 there was a spike in deaths because of that. It essentially
02:10:50 5 shook up the drug markets and, you know, nobody knew what
02:10:54 6 they were getting.

02:10:55 7 The pandemic also has disrupted treatment. So
02:11:01 8 treatment facilities early on, some of them closed
02:11:03 9 temporarily, some changed their policies. And there were
02:11:07 10 efforts to counterbalance that, you know, doing more
02:11:12 11 telemedicine and stuff. But the second way it's disrupted
02:11:17 12 things is that it's disrupted the delivery of treatment.

02:11:19 13 And the third, you know, which goes right to the
02:11:22 14 heart, is that if you believe that addiction is a disease of
02:11:26 15 isolation, which I do and which many do, and that's how
02:11:32 16 oftentimes you'll hear it defined sort of on the streets,
02:11:36 17 you know, the pandemic has been horrible because it has
02:11:39 18 isolated people that are trying to live in recovery.

02:11:42 19 And, you know, the recovery community needs each
02:11:46 20 other. And the pandemic has made it harder for that
02:11:51 21 community to stay together.

02:11:52 22 So those are some of the ways. And that's been borne
02:11:55 23 out in data. This isn't just like a theoretical concern.
02:11:58 24 There's real data showing.

02:12:00 25 And I believe Attorney General Yost in Ohio reported

02:12:03 1 that, I believe it was maybe March and April or April and
02:12:07 2 May of 2020, that deaths were higher than ever before, than
02:12:11 3 even in 19 -- even in 2017.

02:12:16 4 So the pandemic has set back efforts but, you know,
02:12:19 5 there are many glimmers of hope as well.

02:12:21 6 MR. LANIER: All right. Thank you very much.

02:12:22 7 Pass the witness, Your Honor.

02:12:26 8 THE COURT: Okay. Cross-examination?

02:12:28 9 MS. SULLIVAN: May I, Your Honor?

02:12:29 10 THE COURT: Yes.

02:12:30 11 MS. SULLIVAN: Thank you.

02:12:46 12 - - - - -

02:12:46 13 CROSS-EXAMINATION

02:12:46 14 BY MS. SULLIVAN:

02:12:46 15 Q Good afternoon, Dr. Alexander. How are you?

02:12:48 16 A Fine, thank you. How are you?

02:12:50 17 MS. SULLIVAN: Good afternoon, Browns fans.

02:12:53 18 Q Dr. Alexander, we haven't met. I'm Diane Sullivan,
02:12:57 19 and I'm here for the folks at Giant Eagle, one of the
02:12:59 20 companies that's been sued in this case. And I'm happy to
02:13:02 21 meet a former Giant Eagle employee.

02:13:04 22 A Thank you.

02:13:05 23 Q Dr. Alexander, looking at your expert report and your
02:13:09 24 reliance material, it looks like you didn't look at a single
02:13:12 25 company document for any of these four defendants in this

02:13:15 1 case?

02:13:18 2 **A** I don't believe that I looked at materials produced by
02:13:21 3 the defendants, although I would -- you know, to be sure,
02:13:25 4 I'd want to ask the plaintiffs' counsel. But I don't
02:13:27 5 believe so.

02:13:27 6 **Q** Okay. In other words, you haven't looked at any
02:13:30 7 prescription data for any of these defendants, any policies
02:13:32 8 or procedures for any of the defendants as part of your work
02:13:35 9 in this case?

02:13:36 10 **A** Well, I've reviewed portions of other expert reports
02:13:40 11 such as Mr. Catizone's reports and Mr. McCann's reports, so
02:13:46 12 I think that has -- that gave me some window into, you know,
02:13:50 13 the actions of defendants. But I haven't reviewed any
02:13:55 14 primary data myself.

02:13:56 15 I didn't do any data analyses, and I wasn't given
02:14:00 16 documents that I believe were provided directly by
02:14:02 17 defendants.

02:14:04 18 **Q** Fair enough. And Dr. Alexander, you have no evidence
02:14:07 19 that any of these defendants filled any prescription in Lake
02:14:14 20 or Trumbull County that was not legitimate?

02:14:15 21 **A** Well, I don't. I wasn't asked to look at that
02:14:19 22 evidence. It wasn't required for what I was asked to do.
02:14:22 23 But I do not have that sort of evidence.

02:14:24 24 **Q** And, Dr. Alexander, you also don't have any evidence
02:14:27 25 that any prescription filled by any of these defendants in

02:14:31 1 Lake or Trumbull County was diverted and caused harmed?

02:14:34 2 **A** Again, I do not. And that wasn't part of what I was
02:14:38 3 asked to do and wasn't required for me to answer the two
02:14:42 4 questions that I was asked to answer, which were presented
02:14:47 5 earlier.

02:14:48 6 **Q** Dr. Alexander, did the plaintiffs' lawyers tell you
02:14:52 7 that Giant Eagle has never disputed that there's an opioid
02:14:55 8 epidemic in Lake and Trumbull County, that that's not in
02:14:59 9 dispute?

02:15:00 10 **A** I don't know that I was told that specifically, but I
02:15:05 11 certainly have the sense that there's not a lot of
02:15:08 12 controversy about that statement.

02:15:11 13 **Q** Okay. And similarly, Dr. Alexander, did the
02:15:15 14 plaintiffs' lawyers tell you, and I'll let them speak for
02:15:18 15 themselves, but I don't believe any of the companies here
02:15:20 16 dispute that there's an opioid epidemic in Lake or Trumbull
02:15:23 17 County.

02:15:23 18 Do you know that?

02:15:25 19 **A** Again, I don't know that I had a specific conversation
02:15:30 20 about what the -- what you and your colleagues, what the
02:15:35 21 defendants might believe is the case. But I haven't gotten
02:15:38 22 the sense in preparing for my report or today that there was
02:15:42 23 a lot of controversy as to whether there was an epidemic.

02:15:46 24 **Q** Fair enough, Doctor.

02:15:47 25 And, Dr. Alexander, as I understand it, you are an

02:15:51 1 epidemiologist, a pharmacoepidemiologist, and you're also an
02:15:55 2 internal medicine doctor?

02:15:58 3 **A** Yes.

02:15:58 4 **Q** And you were not -- I think you were candid in your
02:16:01 5 expert report, you're not an addiction specialist, a
02:16:04 6 specialist in the treatment of people with opioid use
02:16:06 7 disorder?

02:16:06 8 **A** Well, I'd like to see my report. If I speak to that
02:16:10 9 in my report, then I would prefer to see my report, if
02:16:12 10 that's okay.

02:16:15 11 **Q** Doctor, I think we gave you a binder. And if you want
02:16:17 12 to look at Tab 2?

02:16:33 13 MS. SULLIVAN: And, Mr. Pitts, if I could have
02:16:36 14 the ELMO.

02:16:37 15 **Q** Let me know when you have it.

02:16:39 16 **A** Yes, I do. Thank you.

02:16:40 17 **Q** And it's on page 3?

02:16:41 18 **A** Okay.

02:16:41 19 **Q** And you were candid I think, Doctor, where you said,
02:16:44 20 "I do not specialize in the care of patients with opioid use
02:16:46 21 disorder. I have patients in my practice with opioid use
02:16:50 22 disorder who I co-manage with addiction specialists."

02:16:54 23 Right?

02:16:55 24 **A** Yes. "And I care for patients who have lost family
02:16:58 25 members to fatal overdoses," yes.

02:17:01 1 **Q** Yes, like a good doctor would. But in other words,
02:17:04 2 you refer your patients out to a specialist who have opioid
02:17:06 3 use disorder, an addiction specialist?

02:17:09 4 **A** Well, I have patients with addiction, and they -- you
02:17:14 5 know, I think the degree to which I co-manage with an
02:17:17 6 addiction specialist depends on the patient. It's just like
02:17:20 7 a patient with heart failure or emphysema or bad arthritis,
02:17:25 8 there is a level at which I'm comfortable as a general
02:17:28 9 internist providing care, and then there's a level where I
02:17:31 10 say, you know, this is something where I want to be sure,
02:17:36 11 you know, all of us are smarter than any of us, and I
02:17:40 12 co-manage with an addiction specialist.

02:17:41 13 So it depends really on the patient whether or not I
02:17:44 14 care for them alone or whether a patient with opioid
02:17:48 15 addiction I co-manage with someone else.

02:17:51 16 **Q** But you acknowledged in your report you're not a
02:17:55 17 specialist in the care of patients with opioid use disorder?

02:17:58 18 **A** Correct, I wouldn't call myself an addiction
02:17:59 19 specialist.

02:18:01 20 **Q** And, Doctor, you have -- and I think you testified to
02:18:05 21 this, but it's also that you've said it in your report and
02:18:10 22 to Congress, you believe that the opioid crisis is caused by
02:18:14 23 the oversupply of opioids?

02:18:17 24 **A** Well, if this is in my testimony, I guess I would like
02:18:21 25 to review it so that I understand what you're referring to

02:18:26 1 in my Congressional testimony.

02:18:28 2 **Q** Do you not agree, Doctor, that the opioid crisis is

02:18:32 3 driven by the oversupply of opioids?

02:18:34 4 **A** I think the epidemic is a complex epidemic, and

02:18:38 5 there's not a single factor that has caused the epidemic.

02:18:43 6 But I think one of many important factors is the oversupply

02:18:48 7 and overdispensing of opioids in communities around the

02:18:51 8 country, including in Lake and Trumbull Counties.

02:18:54 9 **Q** And, Doctor, if you could just turn to page 73 of your

02:18:58 10 expert report. That would be Tab 2.

02:19:14 11 **A** Okay.

02:19:14 12 **Q** And do you see, Doctor, in your report -- and I assume

02:19:23 13 you wrote your report, right, sir?

02:19:24 14 **A** Of course.

02:19:25 15 **Q** Okay. And you say that "the opioid epidemic is the

02:19:28 16 worst drug episode in our nation's history, and it has been

02:19:31 17 driven by large increases in the oversupply of prescription

02:19:35 18 opioids for the treatment of pain."

02:19:37 19 That was your conclusion, right?

02:19:39 20 **A** Yeah, I stand I -- I'm sorry. Go ahead.

02:19:43 21 **Q** I didn't mean to interrupt you.

02:19:44 22 **A** I stand by that. And I would like to say that I take

02:19:47 23 full responsibility for the entirety of my report, and I

02:19:50 24 wrote -- I drafted, you know, most of it. But it certainly

02:19:56 25 represents my views.

02:19:56 1 **Q** Yeah.

02:19:57 2 **A** But I think what I would say here about this is that I
02:20:01 3 would not say that it's been exclusively driven or only
02:20:04 4 driven or that this has been the only factor, but I believe
02:20:07 5 that it's been a very important factor, yes.

02:20:08 6 **Q** At least in your expert report here you said nothing
02:20:13 7 else, you said it's driven by the oversupply of opioids,
02:20:15 8 fair?

02:20:16 9 **A** Yes, that is what it says.

02:20:17 10 **Q** And, Doctor, you have published about what drove that
02:20:22 11 oversupply, correct?

02:20:23 12 **A** I believe so, yes.

02:20:27 13 **Q** And you have -- and Mr. Lanier talked about how you
02:20:32 14 are serving as an expert in some other cases where
02:20:37 15 plaintiffs' lawyers and counties are suing for opioid
02:20:42 16 litigation, correct?

02:20:44 17 **A** Well, yes, my role in cases has been to focus on
02:20:49 18 whether there's an epidemic and how the harms from the
02:20:52 19 epidemic can best be addressed.

02:20:53 20 **Q** And in fact, Doctor, you have issued reports in
02:20:57 21 multiple cases or been named as an expert where plaintiffs'
02:21:01 22 lawyers are suing manufacturers of opioids saying that they
02:21:04 23 caused the opioid epidemic, correct?

02:21:07 24 **A** Well, I don't -- I mean, I'm an expert in cases where
02:21:12 25 manufacturers are defendants. I don't know the legal

02:21:16 1 nuances of, you know, cause or exclusive cause or other
02:21:21 2 things. But I am an expert in cases where there are
02:21:23 3 defendants that are manufacturers or distributors rather
02:21:28 4 than pharmacies.

02:21:28 5 **Q** Yeah, in other words, Doctor, you are an expert in
02:21:31 6 many cases for the plaintiffs' lawyers where they're blaming
02:21:34 7 the manufacturers and national distributors for causing the
02:21:36 8 opioid crisis?

02:21:37 9 **A** Well, again, you know, my --

02:21:39 10 **Q** Are you able to answer that yes or no, sir?

02:21:41 11 **A** I mean, what -- can you ask the question again,
02:21:46 12 please?

02:21:46 13 **Q** Sure.

02:21:47 14 Mr. Lanier referred to the cases that you're an expert
02:21:49 15 in. In those cases, Doctor, the plaintiffs' lawyers are
02:21:53 16 suing alleging that manufacturers and distributors caused
02:21:56 17 the opioid crisis, national distributors.

02:22:00 18 **A** In those cases I'm working to advise the communities
02:22:04 19 and parties involved on how best to prevent further people
02:22:07 20 from getting injured or dying.

02:22:09 21 **Q** And in those cases, the lawsuit is against the
02:22:12 22 manufacturers of opioids and national distributors of
02:22:16 23 opioids, like AmerisourceBergen, Cardinal Health, and
02:22:20 24 McKesson, where the plaintiffs' lawyers are blaming those
02:22:23 25 entities for causing the opioid epidemic, fair?

02:22:25 1 **A** I believe that's the case, but again, I prefer not to
02:22:28 2 get involved in the blame part because that's not what I was
02:22:31 3 asked to evaluate.

02:22:33 4 **Q** And, Doctor, you have actually published on how Purdue
02:22:39 5 Pharmaceutical Company was a major cause of the opioid
02:22:41 6 crisis, right?

02:22:42 7 **A** Well, again, it would be helpful to see the specific
02:22:45 8 reference.

02:22:49 9 **Q** Sure. If we could go to Tab 10 of the binder,
02:22:52 10 Dr. Alexander.

02:23:02 11 **A** Okay.

02:23:03 12 **Q** And this is HBC/GE Exhibit 1037?

02:23:11 13 **A** Yes.

02:23:11 14 **Q** And do you see, sir, that you're an author on this
02:23:14 15 paper?

02:23:14 16 **A** Yes.

02:23:14 17 **Q** And it was -- it's dated 2015.

02:23:18 18 Do you see that?

02:23:19 19 **A** Yes, I do.

02:23:22 20 **Q** Okay. And if we look at your paper from 2015, this is
02:23:29 21 a paper where you give an overview of the opioid and heroin
02:23:33 22 crisis and talk about a public health approach to an
02:23:38 23 epidemic of addiction. Right, sir?

02:23:40 24 **A** Yes.

02:23:40 25 **Q** And if we turn to page 3 but on the bottom it's page

02:23:48 1 562, Doctor.

02:23:55 2 **A** Okay.

02:23:55 3 **Q** I want to talk about some of the things that you've
02:23:57 4 talked about.

02:23:58 5 So first on the prior page it talks about "History of
02:24:03 6 Opioid Addiction in the United States." That's on page 561.

02:24:09 7 **A** Yeah, I'm with you.

02:24:10 8 **Q** Okay. And then if you flip to page 562, you talk
02:24:19 9 about how "the rate of opioid use began accelerating rapidly
02:24:22 10 in 1996."

02:24:23 11 Do you see that?

02:24:25 12 **A** If you could point out to me what paragraph, that
02:24:28 13 would be helpful.

02:24:29 14 **Q** Do you see it on the monitor?

02:24:30 15 **A** Oh, yes. Yes, I do.

02:24:31 16 **Q** And then you say, "This acceleration was fueled in
02:24:37 17 large part by the introduction in 1995 of OxyContin, an
02:24:41 18 extended release formula of oxycodone manufactured by Purdue
02:24:47 19 Pharma," right?

02:24:47 20 **A** Yes, I believe that's true.

02:24:48 21 **Q** So you and your co-authors on the paper are making
02:24:52 22 clear here that OxyContin and Purdue Pharma was what
02:24:59 23 accelerated rapidly the opioid crisis, right?

02:25:06 24 **A** Well, I believe so. Yeah, we're making the point that
02:25:11 25 the introduction of OxyContin and its widespread prescribing

02:25:19 1 and dispensing of that product was important in fueling the
02:25:27 2 increased opioid use that began in the late 1990s.

02:25:31 3 **Q** Yeah, in fact, you say that the use of opioids was
02:25:34 4 fueled in large part by the introduction of OxyContin,
02:25:36 5 right?

02:25:37 6 **A** Right.

02:25:37 7 **Q** And then you go on to talk about how Purdue Pharma
02:25:43 8 funded 20,000 pain-related educational programs and engaged
02:25:49 9 in other campaigns to try to convince people to use
02:25:54 10 OxyContin, or doctors to prescribe it, right?

02:26:01 11 **A** Yes.

02:26:05 12 **Q** And in fact, Doctor, you and your co-authors go on to
02:26:09 13 say -- and that's true, right, you know, Dr. Alexander, that
02:26:12 14 Purdue Pharma has pled guilty to a crime acknowledging that
02:26:15 15 they mislead the public about the risk of addiction from
02:26:18 16 OxyContin?

02:26:20 17 **A** I don't know the details of what they have pled guilty
02:26:24 18 to, but I believe that there are cases in bankruptcy court,
02:26:28 19 and I believe that they have admitted wrongdoing.

02:26:30 20 **Q** And, Doctor, you actually testified -- we can go to
02:26:36 21 it, but let's finish it with your paper -- how Purdue Pharma
02:26:43 22 and you allege other manufacturers misled doctors about the
02:26:46 23 risk of addiction from opioids like OxyContin, right?

02:26:49 24 **A** Where -- can you point out where I'm saying that?

02:26:52 25 **Q** Well, I'm asking you that.

02:26:54 1 Haven't you written and said that, that Purdue Pharma
02:26:57 2 has misled doctors about the risk of addiction from
02:27:02 3 OxyContin?

02:27:02 4 **A** Well, I think Purdue Pharma and other manufacturers
02:27:05 5 have contributed, importantly, to the opioid epidemic by
02:27:11 6 driving increased sales of their products.

02:27:16 7 But if you're asking for a specific statement about
02:27:20 8 Purdue Pharma misled X, then I guess it would be helpful for
02:27:24 9 me to see where I've said that.

02:27:25 10 **Q** And I apologize, maybe my question wasn't clear. I
02:27:28 11 wasn't asking for a specific statement.

02:27:29 12 That's your view, Doctor, that Purdue Pharma and other
02:27:33 13 manufacturers misled doctors about the risk of opioid
02:27:36 14 addiction?

02:27:39 15 **A** I believe that opioids were -- have been heavily
02:27:42 16 marketed and promoted and that that marketing and promotion
02:27:46 17 has contributed to widespread underestimation of the risks
02:27:52 18 of opioids and overestimation of the benefits. So I believe
02:27:55 19 that that's important as one of many different factors that
02:28:00 20 has created the situation that we're currently in.

02:28:04 21 **Q** Marketing promoted by manufacturers like Purdue
02:28:08 22 Pharma? Opioids were marketed and promoted by manufacturers
02:28:11 23 like Purdue Pharma?

02:28:12 24 **A** Correct.

02:28:12 25 **Q** And you talk here in your paper about how the

02:28:18 1 president of the American Pain Society introduced a campaign
02:28:22 2 entitled "Pain is the Fifth Vital Sign," and that "encourage
02:28:27 3 healthcare professionals to assess pain with the same zeal
02:28:30 4 as they do vital signs and urge more aggressive use of
02:28:33 5 opioids for chronic noncancer pain." Right?

02:28:40 6 Do you see that, sir?

02:28:41 7 **A** Yes, I do.

02:28:42 8 **Q** And in the paragraph above you talk about how
02:28:45 9 Purdue Pharma funded that effort. In other words, they
02:28:48 10 funded the American Pain Society to try to convince people
02:28:53 11 to treat pain as a fifth vital sign and prescribe more
02:28:57 12 opioids, convince doctors to prescribe more opioids, right?

02:29:00 13 **A** Well, yeah. I mean, I don't know all the details of
02:29:04 14 the flow of dollars, but I think Purdue and perhaps other
02:29:09 15 manufacturers certainly supported these organizations that
02:29:12 16 helped to essentially enhance the sales of their products.

02:29:15 17 **Q** This is your paper, right? I didn't -- you wrote this
02:29:18 18 paper?

02:29:19 19 **A** I did. I did.

02:29:21 20 **Q** Okay. And in this paper you're talking about how
02:29:24 21 Purdue influenced the prescribing practices of doctors as it
02:29:29 22 relates to opioids?

02:29:30 23 **A** I believe that's true. I believe that they did.

02:29:32 24 MR. WEINBERGER: Your Honor, can we have a
02:29:34 25 side bar for just a moment, please?

02:29:35 1 THE COURT: Okay.

02:29:36 2 (At side bar at 2:29 p.m.)

02:29:48 3 MR. WEINBERGER: Your Honor, it is very clear
02:29:53 4 from his direct examination and from his report that he is
02:29:57 5 not giving here to give opinion testimony on the causal
02:30:04 6 relationship between the conduct of these defendants or any
02:30:10 7 other nonparty defendants to the opioid epidemic.

02:30:20 8 If she's going to open up the door by asking all these
02:30:25 9 causal relationship questions, we intend to pursue that in
02:30:31 10 redirect.

02:30:32 11 THE COURT: I agree, Ms. Sullivan. I'm not
02:30:34 12 sure where you're going, but you've -- you've now elicited
02:30:39 13 from this witness a lot more than what -- what I thought
02:30:46 14 what he said on direct. And once it's opened up --

02:30:49 15 MS. SULLIVAN: Well, Your Honor, the clear
02:30:51 16 import of his testimony with that prescription medicines
02:30:54 17 caused the opioid crisis and this is --

02:30:56 18 THE COURT: I've said what I've said.

02:30:57 19 MS. SULLIVAN: Thank you, Your Honor.

02:30:59 20 THE COURT: So it's open --

02:30:59 21 MS. SULLIVAN: Thank you, Your Honor.

02:31:00 22 THE COURT: And he'll be on for a long time
02:31:02 23 now.

02:31:08 24 MR. DELINSKY: Your Honor?

02:31:09 25 THE COURT: Yes, Mr. Delinsky.

02:31:10 1 MR. DELINSKY: Your Honor, a portion of his
02:31:11 2 testimony and I believe of his direct testimony, and I
02:31:14 3 believe the transcript will bear this out, is that he did
02:31:17 4 testify that the epidemic was -- has been caused by the
02:31:23 5 overprescribing and overdispensing, and he did eke that in
02:31:28 6 on at least two occasions in response to questions by
02:31:31 7 Mr. Lanier. So this isn't opening the door to anything that
02:31:37 8 Mr. Lanier's examination itself opened the door to or at
02:31:39 9 least --

02:31:40 10 THE COURT: No, I think that overprescribing,
02:31:42 11 overdispensing came out in response to Ms. Sullivan's
02:31:45 12 questions.

02:31:46 13 MR. DELINSKY: No, Your Honor, I think the
02:31:48 14 transcript will show it absolutely --

02:31:49 15 MS. SULLIVAN: Yes, Your Honor, it came in
02:31:50 16 direct.

02:31:51 17 MR. DELINSKY: Yes.

02:31:57 18 THE COURT: Well, I'm not deciding here what
02:32:00 19 questions to ask on direct and what questions to ask on
02:32:03 20 cross. I'm listening carefully. And I'm just saying,
02:32:07 21 Ms. Sullivan, you ought to be very careful about what you're
02:32:11 22 asking because I'm going to allow Mr. Lanier to come back on
02:32:15 23 all these areas.

02:32:16 24 MS. SULLIVAN: Understood, Your Honor.

02:32:17 25 THE COURT: And if you want him to start

02:32:21 1 expressing his opinion on what Purdue did and didn't do and
02:32:23 2 what the four defendants here should have done knowing what
02:32:27 3 Purdue had done, then --

02:32:28 4 MS. SULLIVAN: Your Honor, he's got no
02:32:30 5 information about the four defendants. He's acknowledged
02:32:31 6 that.

02:32:32 7 THE COURT: Trust me, he's got a lot of
02:32:33 8 information and a lot of opinions, and if you open the door,
02:32:39 9 Mr. Lanier's going to ask him about those.

02:32:43 10 MS. SULLIVAN: Thank you, Your Honor.

02:32:54 11 (In open court at 2:32 p.m.)

02:32:54 12 BY MS. SULLIVAN:

02:32:56 13 Q Dr. Alexander, going back to your paper here, talking
02:32:57 14 about the sharp rise in prescription opioid consumption, you
02:33:06 15 talk about how Purdue engaged in a campaign that exaggerated
02:33:12 16 the benefits of long-term opioid use, right?

02:33:20 17 A Yes, opioid manufacturers and pain organizations.

02:33:23 18 Q Yeah. And you told -- and you go on to say on page 2
02:33:28 19 that what Purdue was telling people was not true, right?

02:33:32 20 A I'm sorry. Can you move the page down so that I can
02:33:35 21 see where you're referring to on page 2?

02:33:37 22 Q Sure. I'm sorry.

02:33:44 23 A Correct, that the companies and professional societies
02:33:48 24 were promoting messages and suggesting evidence for
02:33:52 25 statements that really weren't -- where there wasn't the

02:33:54 1 evidence to support that.

02:33:55 2 **Q** Yeah. And so when you talked about what caused the
02:33:59 3 opioid epidemic in this paper, the rise in opioid
02:34:03 4 consumption, you talked about Purdue Pharma and its
02:34:08 5 campaign, spending millions of dollars, to try to convince
02:34:12 6 doctors to prescribe OxyContin in a way that you thought was
02:34:16 7 misleading?

02:34:18 8 **A** Yes. I mean, I don't know the millions, but, yes,
02:34:24 9 we're talking about the role of pharmaceutical manufacturers
02:34:27 10 in this paper.

02:34:28 11 **Q** Well, specifically Purdue?

02:34:30 12 **A** Well, I think in some places I refer to manufacturers
02:34:33 13 more broadly, but, you know, the paper wasn't about trying
02:34:37 14 to parse out who all of the contributors were to the opioid
02:34:41 15 epidemic or apportion responsibility across, that it was
02:34:46 16 focused on explaining how OxyContin in the late 1990s was
02:34:52 17 really, we believe, a driving force for early harms that
02:34:58 18 continued, you know, throughout many, many years.

02:35:01 19 **Q** And, Dr. Alexander, in this paper you and your
02:35:04 20 colleagues do not mention pharmacies in any way as
02:35:08 21 contributing to the oversupply of opioids or the opioid
02:35:12 22 crisis?

02:35:13 23 **A** I don't believe that we do nor may we mention other
02:35:18 24 factors that could contribute as well. We only --

02:35:21 25 **Q** Sir, could you just answer my question?

02:35:23 1 The truth is in this paper where you outline the cause
02:35:27 2 of the opioid epidemic, the cause of oversupply, you did not
02:35:31 3 mention pharmacies at all?

02:35:32 4 **A** I believe that's true.

02:35:33 5 **Q** And, Doctor, one of the other things you point to as a
02:35:42 6 cause of the oversupply, a cause of the opioid epidemic, is
02:35:47 7 the FDA and the role of the FDA in this opioid crisis,
02:35:50 8 right?

02:35:51 9 **A** Yes, I think that's a good example of the fact that
02:35:54 10 there's not just one organization or entity that's involved
02:35:58 11 in this mix, that there are many. And the FDA is one as
02:36:02 12 well, yes.

02:36:02 13 **Q** Yes. And in fact, you faulted -- Dr. Alexander, you
02:36:09 14 faulted the FDA for approving too many opioids and for not
02:36:12 15 being stricter on how they were labeled?

02:36:17 16 **A** Well, again, I would prefer to review specific papers
02:36:20 17 if that's what you're referring to or testimony, but some of
02:36:22 18 the work that I've done examining the role of the FDA has
02:36:24 19 been to look at whether they are appropriately monitoring
02:36:30 20 and ensuring the safe use of opioids after they're approved.
02:36:35 21 And so that's an example of the type of shortcoming that I
02:36:38 22 and my colleagues have identified.

02:36:40 23 **Q** Yeah, you and your colleagues have identified the fact
02:36:44 24 that, in your view, the FDA did not do their job here, that
02:36:47 25 they were responsible in part for the opioid crisis?

02:36:52 1 **A** I believe that the FDA could have and still can
02:36:58 2 regulate opioids, you know, in better accordance with the
02:37:02 3 scientific evidence, that's true.

02:37:03 4 **Q** Yeah. And so in addition to Purdue Pharma, one of the
02:37:08 5 other entities you cite as driving oversupply and driving
02:37:13 6 the opioid epidemic is the Federal Drug Administration, the
02:37:20 7 FDA?

02:37:21 8 **A** Yes, I think the FDA -- you know, it's a complex mix,
02:37:24 9 and there's lots of different organizations and parties that
02:37:27 10 have contributed to the current state of affairs, and the
02:37:32 11 FDA is one of them.

02:37:32 12 **Q** And, Doctor, are you aware that the FDA approved 21
02:37:36 13 different opioids between 19 -- approved for sale 21
02:37:40 14 different opioids between 1990 and 2017?

02:37:46 15 **A** I'm not, but it wouldn't surprise me. And I think we
02:37:49 16 have published papers looking at the number approved. And
02:37:53 17 you may be citing one of them, but it wouldn't surprise me.

02:37:56 18 **Q** And, Doctor, one of the other things that you fault
02:38:00 19 for causing the opioid epidemic is the Drug Enforcement
02:38:08 20 Administration, correct?

02:38:08 21 **A** Well, I haven't studied Drug Enforcement
02:38:11 22 Administration as closely, but I do believe that they also
02:38:14 23 are in the mix just as other parties are.

02:38:17 24 **Q** And when you say they're "in the mix," you have
02:38:18 25 concluded that they are in the mix because they increased --

02:38:23 1 just to back up, I think our jurors have heard that Drug
02:38:27 2 Enforcement Administration controls how much opioid can be
02:38:29 3 manufactured or imported each year into the United States,
02:38:33 4 right?

02:38:34 5 **A** Not that I'm aware of, but this is my first afternoon
02:38:38 6 here, so I haven't -- I don't know what the jurors have
02:38:41 7 heard.

02:38:41 8 **Q** Oh, fair enough.

02:38:42 9 But you know, Dr. Alexander, that the Drug Enforcement
02:38:46 10 Administration approves how much opioid can be manufactured
02:38:49 11 or imported in the United States each year?

02:38:52 12 **A** Yes, I believe that's true.

02:38:53 13 **Q** In other words, they set the levels. They have -- the
02:38:55 14 Government, the Federal Government, has control over how
02:39:00 15 many opioids can be prescribed here because they set limits?

02:39:02 16 **A** Well, they have control over the prescription opioid
02:39:07 17 market, tight control, or tighter control. You know, the
02:39:12 18 illicit opioid market is another story, although that is
02:39:15 19 part of their purview as well. But of course, you know,
02:39:18 20 opioids come across the borders.

02:39:21 21 **Q** Right. And in fact, in some of your papers you talk
02:39:24 22 about the problem with illicit drugs coming across the
02:39:27 23 borders, fentanyl, heroin, cocaine, drug cartels, that's
02:39:32 24 part of the opioid crisis?

02:39:33 25 **A** Well, there's an incredible demand for illicit opioids

02:39:36 1 in the United States, and that demand drives the shipment of
02:39:44 2 opioids.

02:39:48 3 **Q** From abroad?

02:39:48 4 **A** Correct.

02:39:49 5 **Q** Doctor, you know because you testified about it and
02:39:53 6 written about it that Drug Enforcement Administration
02:39:55 7 increased the amount of opioids that could be made in the
02:40:00 8 United States by -- for hydrocodone 50 percent and for
02:40:05 9 OxyContin 100 percent from 2015 to 2018?

02:40:09 10 **A** Well, I think I was deposed and I was given something
02:40:12 11 and asked to read it, and I do recall something along those
02:40:17 12 lines, but it was not something that I would have known or
02:40:21 13 was aware of.

02:40:22 14 And again, I was reading back a document that I
02:40:25 15 believe that counsel gave me about quotas changing over
02:40:29 16 time.

02:40:29 17 **Q** Doctor, do you have Tab 5 in your -- if you could turn
02:40:33 18 to Tab 5 in your binder for us.

02:40:43 19 **A** Okay.

02:40:43 20 **Q** And this, Doctor, is your 2017 testimony before
02:40:46 21 Congress on the issue of combatting the opioid crisis?

02:40:50 22 **A** Okay.

02:40:51 23 **Q** And I want to point you, sir -- bear with me.

02:41:03 24 I want to point you to page 88 on the top. Let me
02:41:08 25 just show our jurors.

02:41:09 1 This is Defense Exhibit HBC/GE 1329?

02:41:15 2 **A** Okay.

02:41:15 3 **Q** And this is your testimony -- or contains your
02:41:18 4 testimony in 2017 before Congress. Right, sir?

02:41:24 5 **A** Yes.

02:41:24 6 **Q** And if we turn -- let me just get to the beginning so
02:41:28 7 we can confirm it's you.

02:41:29 8 And if we go to page 85, that's where your testimony
02:41:34 9 begins, right, sir?

02:41:35 10 **A** Yes.

02:41:36 11 **Q** And if we turn to page --

02:41:40 12 THE COURT: I think it starts on page 83. At
02:41:44 13 least on my --

02:41:50 14 MS. SULLIVAN: Fair enough, Your Honor.

02:41:52 15 **Q** Looks like it starts on page 83.

02:41:55 16 **A** Thank you. Yes.

02:41:56 17 **Q** And another piece of it on 85.

02:41:58 18 And if we could turn, Doctor, to page 88 of your
02:42:03 19 testimony.

02:42:03 20 **A** Yes.

02:42:03 21 **Q** And here you made clear, sir, that "the origins of the
02:42:13 22 epidemic are multiple but arise from within the healthcare
02:42:16 23 system, including unsubstantiated claims about the safety
02:42:21 24 and effectiveness of opioids, multifaceted campaigns by
02:42:25 25 pharmaceutical companies, and the failure of the FDA and DEA

02:42:28 1 to regulate these products appropriately."

02:42:31 2 Right? That was your testimony before Congress?

02:42:36 3 **A** Yes. But -- yes.

02:42:37 4 **Q** And, Doctor, if you could just try to listen to my
02:42:41 5 questions, that would be great.

02:42:42 6 And so what are you referring to here about the DEA's
02:42:47 7 failure? You refer here to the DEA's failure to regulate
02:42:52 8 opioids appropriately, right?

02:42:53 9 **A** Right. I mean, I would just like to clarify my last
02:42:57 10 statement, which was that I'm not aware of having discussed
02:43:00 11 or testified regarding specific magnitude of change in DEA
02:43:07 12 quotas. And I've studied the DEA and understand the DEA
02:43:11 13 less than I do the FDA, but I certainly stand by this
02:43:18 14 statement that the causes -- that the origins of the
02:43:28 15 epidemic are multiple and that the origins include the
02:43:33 16 failure of the FDA and DEA to regulate these products
02:43:36 17 appropriately.

02:43:38 18 I believe that that's -- those are both true
02:43:40 19 statements, I believe.

02:43:40 20 **Q** Well, I hope so. You testified under oath to
02:43:44 21 Congress, right? I hope that they're true.

02:43:45 22 **A** Correct.

02:43:46 23 **Q** And when you're referring to the DEA, you're referring
02:43:47 24 to the fact that the DEA did not limit quotas appropriately?

02:43:54 25 **A** I do not know. I would want to take more time to

02:43:58 1 understand what I -- what specific -- you know, what
02:44:03 2 specific regulatory action on the part of the DEA I was
02:44:07 3 referring to.

02:44:09 4 And there may be written -- if these are my spoken
02:44:14 5 comments, there may be written comments where I spell that
02:44:16 6 out.

02:44:16 7 And the other thing is that I also submitted the
02:44:18 8 report from evidence to impact --

02:44:22 9 **Q** Yeah, we're going to look at that, sir.

02:44:24 10 **A** And that may speak in more detail to what I was
02:44:26 11 thinking about with the DEA, with respect to the DEA.

02:44:29 12 **Q** Fair enough. But we can agree when you testified
02:44:31 13 before Congress, you faulted specifically pharmaceutical
02:44:36 14 manufacturers, the FDA, and the DEA for causing the opioid
02:44:41 15 epidemic, right?

02:44:42 16 **A** Yes.

02:44:42 17 **Q** What you did not mention in your Congressional
02:44:45 18 testimony here is anything that pharmaceutical -- I'm sorry.
02:44:47 19 What you did not mention in your Congressional testimony is
02:44:51 20 anything that these four pharmacies or any pharmacies did to
02:44:55 21 contribute to the opioid epidemic, fair?

02:44:57 22 **A** Well, I believe in the report that accompanied this --

02:45:01 23 **Q** Sir --

02:45:02 24 MR. LANIER: Let him answer the question,
02:45:04 25 please.

02:45:04 1 MS. SULLIVAN: I'm sorry. Go ahead.

02:45:06 2 THE COURT: Let him answer the question,
02:45:07 3 please, Ms. Sullivan.

02:45:08 4 MS. SULLIVAN: Sure.

02:45:08 5 **A** I believe in the report from Johns Hopkins that
02:45:10 6 accompanied this testimony, I do speak -- we do speak to the
02:45:15 7 role of pharmacies, but in this specific paragraph I do not
02:45:18 8 discuss the role of pharmacies.

02:45:19 9 **Q** We're going to look at that report.

02:45:21 10 But certainly in this testimony when you're talking
02:45:22 11 about what caused the opioid crisis, you talk about three
02:45:25 12 things, pharmaceutical manufacturers, the FDA, and the Drug
02:45:33 13 Enforcement Administration, correct, sir?

02:45:39 14 **A** Yeah, unsubstantiated claims about safety and
02:45:43 15 effectiveness, campaigns by companies, and failure of
02:45:45 16 regulation, yes.

02:45:46 17 **Q** And then when you're talking about unsubstantiated
02:45:48 18 claims about safety and effectiveness of opioids, you're
02:45:52 19 talking about manufacturers?

02:45:53 20 **A** Well, I mean, there's really been a culture that's
02:45:55 21 permeated, you know, communities and the country about that,
02:46:03 22 you know, where the safety and effectiveness of these
02:46:06 23 products has been misconstrued. But I think manufacturers
02:46:08 24 have been important drivers of that culture.

02:46:14 25 **Q** And testifying before Congress, I take it it's kind of

02:46:16 1 a big deal, it's important.

02:46:18 2 **A** It was an honor, and it was an honor to do, and I was
02:46:22 3 pleased that they were interested in focusing on the opioid
02:46:25 4 epidemic.

02:46:26 5 **Q** And you try to get it right, right? You try to get it
02:46:29 6 right when you testify before Congress?

02:46:31 7 MR. WEINBERGER: Objection, Your Honor. This
02:46:34 8 is argumentative.

02:46:34 9 THE COURT: I'll allow that question.

02:46:35 10 **A** Yes.

02:46:36 11 **Q** And the three -- and what you mention here is
02:46:40 12 pharmaceutical companies and unsubstantiated campaigns, the
02:46:44 13 FDA, and the DEA, right, as the cause of the opioid
02:46:47 14 epidemic?

02:46:48 15 **A** Yes.

02:46:48 16 **Q** And you don't mention pharmacies?

02:46:50 17 **A** Correct.

02:46:51 18 **Q** And, Dr. Alexander, if we look further in your -- in
02:47:06 19 that same Congressional testimony, you were asked some
02:47:12 20 questions, sir. If we look at page 97 and 98.

02:47:23 21 Tell me when you've got there.

02:47:26 22 **A** Yes, I'm there.

02:47:27 23 **Q** Okay. And some of the Congressmen and -women are
02:47:30 24 asking you some questions about your testimony, correct?

02:47:32 25 **A** Yes.

02:47:33 1 **Q** And you're asked by the chairman, "Dr. Alexander, you
02:47:42 2 mentioned overprescribing as being one of the -- kind of the
02:47:45 3 dual things that you would address first. What are the
02:47:47 4 causes of overprescription? Is it misdiagnosis? Is it
02:47:51 5 failure to consider? What are the root causes?"

02:47:54 6 Do you see that question?

02:47:56 7 **A** Yes, I do.

02:47:57 8 **Q** Okay. And you talk about -- in your answer you talk
02:48:00 9 about this "widespread prevalence of pain and the notion
02:48:04 10 that pain needs to be fully abated," right?

02:48:06 11 **A** Yes.

02:48:06 12 **Q** And again, Doctor, you're talking about this campaign
02:48:13 13 that -- by Purdue Pharma and, as you say, other
02:48:18 14 manufacturers that convinced doctors that they should
02:48:22 15 prescribe opioids more aggressively?

02:48:26 16 **A** Yes.

02:48:26 17 **Q** Okay. And you're also talking about how labeling is
02:48:31 18 also an issue? Again, going to the FDA issues.

02:48:37 19 **A** Yes.

02:48:37 20 **Q** Okay. And then you say it's a terrific question,
02:48:42 21 right?

02:48:44 22 **A** Well, then I say, "There are many, many, many causes
02:48:47 23 that have contributed to the overprescribing."

02:48:50 24 And then I go on to say -- then I'm asked a new
02:48:54 25 question, and then I say, "Well, it's a terrific question."

02:48:59 1 **Q** But what happened as you outlined in your paper and
02:49:02 2 your testimony is that Purdue Pharma and, as you say, some
02:49:04 3 of these other manufacturers convinced doctors through this
02:49:10 4 campaign that you've identified as misleading to prescribe a
02:49:13 5 lot more opioids than they otherwise would have?

02:49:15 6 **A** I think they have. I think there are a lot of
02:49:20 7 different parties and organizations that have contributed to
02:49:22 8 the mix.

02:49:22 9 **Q** That wasn't my question, sir.

02:49:24 10 **A** I believe that Purdue Pharma was one of those.

02:49:28 11 **Q** But in other words, doctors -- there's no dispute, I
02:49:31 12 think you told Mr. Lanier, prescriptions for opioids
02:49:35 13 increased by 400 million, right?

02:49:37 14 **A** I believe it was 400 percent.

02:49:39 15 **Q** 400 percent, okay.

02:49:40 16 By 400 percent, right?

02:49:42 17 **A** Correct.

02:49:42 18 **Q** And the reason for that, as you outline in your paper,
02:49:48 19 is that Purdue Pharma and, as you say, other manufacturers,
02:49:52 20 convinced doctors that they should be prescribing more
02:49:54 21 opioids, that they weren't as addictive as they previously
02:49:57 22 thought?

02:49:57 23 **A** That's not the exclusive reason. That's a reason. As
02:50:01 24 I say here in this testimony that you're showing, there are
02:50:03 25 many, many causes for the overprescribing.

02:50:04 1 **Q** Yes. But you don't have any evidence that Giant Eagle
02:50:07 2 did anything to convince that -- they weren't promoting
02:50:10 3 opioids. They're not out there advertising opioids, they're
02:50:13 4 not a manufacturer. You don't have any evidence like that?

02:50:15 5 **A** Well, I wasn't asked in this case to evaluate or weigh
02:50:20 6 in on what Giant Eagle specifically did.

02:50:25 7 **Q** Sir, my question was, you've looked at the opioid
02:50:27 8 crisis broadly.

02:50:29 9 You've never seen any evidence that Giant Eagle or any
02:50:31 10 of these defendants promoted, advertised opioids?

02:50:37 11 **A** I'm not aware -- that's correct, I'm not aware that
02:50:41 12 Giant Eagle markets and promotes opioids.

02:50:43 13 **Q** And so when you're talking about this campaign and
02:50:46 14 this overpromotion convincing doctors to prescribe, you're
02:50:49 15 talking about manufacturers?

02:50:50 16 **A** Well, and professionals -- you know, and advocacy
02:50:55 17 organizations that they may have flown -- that they may
02:50:59 18 have, you know, sent money through -- not flown money
02:51:02 19 through but, you know, channeled money through as two
02:51:08 20 important drivers of that culture, yes, that's what I'm
02:51:11 21 referring to.

02:51:11 22 **Q** And you were asked then in your testimony,
02:51:14 23 Dr. Alexander, "Are there certain specialties or
02:51:17 24 subspecialties where you've identified where the
02:51:19 25 overprescribing is more prevalent."

02:51:22 1 Do you see that?

02:51:22 2 **A** Yes, I do.

02:51:23 3 **Q** And you go on to say that "it's within primary care
02:51:28 4 physicians but a small subset."

02:51:30 5 Do you see that?

02:51:31 6 **A** Yes, prescribing is somewhat skewed.

02:51:35 7 **Q** But what you go on to say is that they're not doing it
02:51:41 8 for ill intent.

02:51:43 9 In other words, these doctors prescribing opioids are
02:51:46 10 doing it for legitimate purposes, right?

02:51:48 11 **A** Well, there's not -- I think both in this testimony
02:51:51 12 and today what I would say is there's not one type of
02:51:54 13 doctor. There are some doctors and other prescribers that
02:51:58 14 are rogue and that are clearly way outside of the boundaries
02:52:02 15 of acceptable practice, you know, 300 patients a day, cash
02:52:08 16 only, you know, down on Main Street.

02:52:12 17 And then there are many other doctors that aren't
02:52:14 18 necessarily -- they may not be aware of the appropriate role
02:52:19 19 of opioids. But I would never characterize them as rogue
02:52:23 20 or, you know, quote/unquote, bad doctors or something like
02:52:26 21 that.

02:52:26 22 **Q** Yeah, what you're telling Congress here is that "most
02:52:31 23 prescribers that are contributing to the epidemic aren't
02:52:34 24 doing it out of ill intent," right? Those were your words.

02:52:42 25 That's what you said?

02:52:43 1 **A** Well, I think I was referring to what Governor
02:52:47 2 Christie said. And I think what I said is I think that
02:52:50 3 there is a very important point here. And in fact, Governor
02:52:53 4 Christie spoke to it when he said that most prescribers that
02:52:56 5 are contributing to this epidemic aren't doing so out of ill
02:52:59 6 intent.

02:53:00 7 **Q** Fair enough. And you agree with that?

02:53:01 8 **A** I do agree with that.

02:53:02 9 **Q** In other words, most prescribers who were prescribing
02:53:10 10 opioids were doing it for legitimate reasons. They
02:53:13 11 genuinely believed they were helping their patients?

02:53:15 12 **A** Well, I have a little bit of the problem with the word
02:53:17 13 "legitimate" because I think it's been used in ways that
02:53:20 14 aren't -- at least when it is referring to legitimate pain,
02:53:27 15 I mean, that's a little bit of a side bar.

02:53:29 16 But what I would say is that most prescribers I
02:53:32 17 believe are trying to help their patients even if they may
02:53:34 18 be using opioids inappropriately.

02:53:35 19 **Q** Yeah, they weren't doing it for bad reasons, they
02:53:39 20 weren't pill mills. They were doctors trying to do their
02:53:42 21 job to help their patients when they were, as you say,
02:53:45 22 overprescribing opioids?

02:53:46 23 **A** Yes.

02:53:46 24 **Q** And if you look at the top of page 98, you go on to
02:53:54 25 say that these prescribers "were not flouting any standard

02:54:00 1 of best medical practice, right?

02:54:11 2 **A** Well, I'm saying that they're not necessarily just
02:54:14 3 flouting any standard of best medical practice. So I'm not
02:54:19 4 saying that it's not -- that just because a prescriber may
02:54:22 5 be prescribing a certain opioid volume, it doesn't mean
02:54:25 6 automatically that they're, you know, throwing out the
02:54:27 7 window standards of medical practice.

02:54:28 8 **Q** Yeah, going to your original point that most doctors
02:54:31 9 who are overprescribing these opioids, as you say, were
02:54:34 10 doing it for good reason. They got duped by the misleading
02:54:37 11 campaign of Purdue and others, as you said, right?

02:54:41 12 **A** Well, I mean, again, there's a very complex mix of
02:54:45 13 factors that have driven the overprescribing. But Purdue
02:54:49 14 and manufacturers are in the mix.

02:54:52 15 **Q** But what you're talking about here is the doctors were
02:54:56 16 misled, in other words, they were writing a lot more opioid
02:54:59 17 prescriptions, 400 percent more, most of them for good
02:55:01 18 reason. They believed that these things were less
02:55:03 19 addictive. That they were within the standard of care.

02:55:16 20 **A** Can you please say that once more?

02:55:18 21 **Q** Sure. When you say that they weren't just flouting
02:55:20 22 any standard of best medical practice, the reason that
02:55:24 23 opioid prescriptions increased by 400 percent, as you say,
02:55:28 24 is that these doctors were just prescribing so many more
02:55:31 25 opioids?

02:55:32 1 **A** The reason -- I mean, there are several factors that
02:55:36 2 have driven the large increases in opioids over time.

02:55:43 3 Different factors. Doctors, FDA, pharmacies, patients,
02:55:50 4 distributors, et cetera.

02:55:53 5 **Q** But that wasn't my question, Doctor.

02:55:55 6 My question was about your testimony. You're telling
02:55:57 7 Congress here that these -- so you can't get a -- you can't
02:56:02 8 pick up a prescription at a pharmacy unless a doctor writes
02:56:05 9 it, right? Unless it's forged.

02:56:08 10 **A** Well, or other licensed prescriber.

02:56:11 11 **Q** Fair enough. You have to be a licensed prescriber.
02:56:13 12 And what you're saying here is that the reason that
02:56:17 13 doctors were overprescribing was not because they were
02:56:20 14 flouting the standard of care, right?

02:56:23 15 **A** Well, I'm answering a question from Chairman Gowdy
02:56:27 16 about whether there are certain specialties where
02:56:30 17 overprescribing is more prevalent. And in doing so I make
02:56:35 18 the point that primary care physicians are important because
02:56:37 19 of the volume that they account for. And I make the point
02:56:42 20 that the prescribing is skewed, so it's not like every
02:56:45 21 primary care provider prescribes exactly the same amount.

02:56:49 22 And then I make the point that not all of them have
02:56:52 23 gone rogue.

02:56:52 24 So I'm not trying to ascribe a certain amount of the
02:56:56 25 overuse to well-intentioned or poorly intentioned

02:57:00 1 prescribers. I'm just trying to say, Chairman Gowdy and
02:57:04 2 members of the committee, this isn't just about the bad
02:57:07 3 apples. We need to think about the systems that we're
02:57:10 4 putting in place that allow so many opioids to be prescribed
02:57:14 5 and dispensed.

02:57:15 6 **Q** And, Doctor, you go on to say that, in fact, the rogue
02:57:24 7 doctors and the opioid shoppers are exceedingly rare, right?

02:57:27 8 **A** Can you please point out where I say that?

02:57:29 9 **Q** Sure. It's just in the same page. Chairman Gowdy
02:57:35 10 asks you, "Has there been any analysis of physicians who
02:57:38 11 write prescriptions for opioid after a patient has been
02:57:41 12 declined a prescription from another physician? In other
02:57:43 13 words, doctor shopping?"

02:57:45 14 And our jurors have heard a fair amount about doctor
02:57:48 15 shopping.

02:57:48 16 Do you see that?

02:57:48 17 **A** Right. So I say that, and then I say, "this is not to
02:57:53 18 suggest that it's not vital that we identify and intervene
02:57:59 19 opioid shoppers. So I'm making clear that it's not like we
02:58:03 20 shouldn't identify the people that may be going pharmacy to
02:58:05 21 pharmacy or may have other -- you know, other flags to
02:58:10 22 suggest that they are having concerning fill patterns or
02:58:13 23 something, but I'm just saying that it's not just about
02:58:16 24 opioid shoppers. You also have to go after and try to
02:58:19 25 improve the quality of care for the broader population of

02:58:23 1 people that are -- you know, it may be a 65-year-old with
02:58:27 2 arthritis who is on OxyContin and, you know, thinks that
02:58:31 3 it's working for her but it's going to increase her
02:58:33 4 likelihood of a fall or something. And so it's about that
02:58:39 5 as well.

02:58:41 6 MR. WEINBERGER: Your Honor, it's 3:00.

02:58:42 7 THE COURT: Well, I was going to wait until
02:58:45 8 Ms. Sullivan maybe finished this document and then take a
02:58:47 9 break.

02:58:47 10 MS. SULLIVAN: I could ask one -- actually,
02:58:49 11 Your Honor, I'm fine taking a break if you want to.

02:58:51 12 THE COURT: All right. Well, you know, I
02:58:52 13 don't like to cut off counsel right in the middle of the
02:58:54 14 flow.

02:58:55 15 So if this is as good a time as any, Ms. Sullivan,
02:58:58 16 we'll take a break.

02:58:59 17 MS. SULLIVAN: I'm fine taking a break. I
02:59:01 18 think everybody could use it.

02:59:02 19 THE COURT: All right. Ladies and gentlemen,
02:59:03 20 we'll take our usual mid afternoon break.

02:59:06 21 The usual admonitions. Thank you.

02:59:12 22 (Recess taken at 2:59 p.m.)

03:21:34 23 (Jury present in open court at 3:21 p.m.)

03:21:37 24 THE COURT: Please be seated, ladies and
03:21:38 25 gentlemen.

03:21:39 1 Doctor, you're still under oath.

03:21:41 2 And Ms. Sullivan, you may continue.

03:21:44 3 MS. SULLIVAN: Thank you, Your Honor.

03:21:46 4 BY MS. SULLIVAN:

03:21:46 5 **Q** Dr. Alexander, we were looking at your Congressional
03:21:49 6 testimony on page 98.

03:21:52 7 And you were asked by the chairman about doctor
03:21:54 8 shopping, right?

03:21:55 9 **A** Yes.

03:21:55 10 **Q** And what you told Congress was that "opioid shoppers
03:22:02 11 are exceedingly rare," right? That was your statement?

03:22:05 12 **A** Yes.

03:22:05 13 **Q** And then you go on to say that "other populations,
03:22:12 14 chronic opioid users that are at much higher risk on a
03:22:16 15 public health level" are essentially more important.

03:22:20 16 **A** Yeah, and individuals filling combinations of opioids
03:22:23 17 and other medicines that put them at higher risk, such as
03:22:27 18 opioid and benzodiazapines.

03:22:31 19 MR. WEINBERGER: You can take your mask off.

03:22:33 20 THE WITNESS: Oh, thank you.

03:22:33 21 **Q** So, Doctor, you responded to Congress, and our jurors
03:22:36 22 have heard a lot about opioid shoppers and rogue
03:22:39 23 prescribers.

03:22:39 24 And what you told Congress is that those are
03:22:42 25 exceedingly rare, right?

03:22:44 1 **A** Rare, important to identify, and also less common than
03:22:52 2 other populations that can be screened for and identified,
03:22:57 3 such as individuals filling specific combinations of
03:23:01 4 medicines.

03:23:02 5 **Q** And when you're talking about other populations,
03:23:04 6 you're talking about people who are obtaining legitimate
03:23:07 7 prescriptions as opposed to opioid shoppers and rogue
03:23:10 8 prescribers, right?

03:23:11 9 **A** Well, again, I have a little bit of trouble with the
03:23:14 10 word "legitimate," but obtaining prescriptions without going
03:23:17 11 doctor to doctor or pharmacy to pharmacy, yes.

03:23:19 12 **Q** Yeah. So rogue prescribers and opioid shoppers, in
03:23:22 13 your view, are exceedingly rare?

03:23:27 14 **A** Yes. Important -- yes, relative to other populations
03:23:29 15 of potential concern.

03:23:30 16 **Q** And if you want to go back, Doctor, to your expert
03:23:35 17 report, Tab 2 on page 11.

03:23:46 18 **A** Okay.

03:23:47 19 **Q** And here, Doctor, you're talking about "eliminating
03:23:51 20 common misconceptions about opioids and the ensuing
03:23:55 21 epidemic," right, paragraph 30?

03:23:57 22 **A** Yes.

03:23:58 23 **Q** And one of the misconceptions that you talk about is
03:24:01 24 that "the epidemic is largely driven by devious individuals
03:24:05 25 such as rogue physicians and patients who are doctor

03:24:08 1 shopping."

03:24:09 2 Do you see that?

03:24:10 3 **A** Yes.

03:24:10 4 **Q** And what you say is that "rogue physicians and doctor
03:24:14 5 shoppers, while very important to identify and manage,
03:24:16 6 account for a very small proportion of opioid-related
03:24:21 7 harms," right?

03:24:21 8 **A** Yes.

03:24:21 9 **Q** Doctor shoppers and rogue physicians, a small
03:24:30 10 proportion of opioid-related harms, okay.

03:24:34 11 Can you also, Doctor, turn to page -- I want to first
03:24:43 12 put up a slide that the plaintiffs' lawyer, Mr. Lanier,
03:24:46 13 showed you.

03:24:49 14 Do you see that, sir? It was your opinion 3 that
03:24:52 15 says --

03:24:52 16 **A** Yes.

03:24:53 17 **Q** -- "Between 1992 and 2010, the volume of opioids
03:24:57 18 dispensed in the U.S. increased by approximately 400
03:25:00 19 percent."

03:25:00 20 Do you see that?

03:25:01 21 **A** Yes.

03:25:01 22 **Q** But if you look at your report on page 8, it says
03:25:09 23 something different, doesn't it, sir?

03:25:12 24 **A** It would be helpful if you direct me to my report.

03:25:14 25 **Q** On the --

03:25:15 1 **A** Oh, I see. Thank you.

03:25:16 2 **Q** Page 8. So paragraph 20 of your report, it actually
03:25:19 3 has the exact same quote, but for our jury today you changed
03:25:26 4 what was in your report, "the volume of opioids prescribed
03:25:30 5 increased by approximately 400 percent" to "dispensed,"
03:25:34 6 right? Somebody changed that?

03:25:35 7 **A** Yes. I mean, every opioid that is --

03:25:37 8 **Q** My question, sir, is somebody changed your report
03:25:39 9 language. This is the same quote, but you changed
03:25:42 10 "prescribed" to "dispensed" or --

03:25:44 11 **A** Yes.

03:25:44 12 **Q** Did you do that or did the plaintiffs' lawyers do
03:25:46 13 that?

03:25:46 14 **A** Well, I made these slides.

03:25:49 15 **Q** Okay. So you changed your report language for your
03:25:53 16 presentation today from "the volume of opioids prescribed
03:25:57 17 increased by 400 percent," meaning doctors prescribed 400
03:26:01 18 percent more to "dispensed," right?

03:26:07 19 **A** Yes.

03:26:08 20 **Q** And one of the things I -- when I was talking to you,
03:26:13 21 Doctor, about your paper about Purdue Pharma, Defense
03:26:19 22 Exhibit HBC Exhibit 1037, one of the things I forgot to ask
03:26:24 23 you about was you told people in your paper that as a result
03:26:29 24 of Purdue's misleading campaign and funding, all of these
03:26:33 25 medical societies, in fact, insurance, Medicaid, Medicare,

03:26:37 1 and private insurance changed the way they covered opioids,
03:26:40 2 right?

03:26:42 3 **A** If you're referring to a specific place, thank you.

03:26:45 4 **Q** Sure. You talk about the Joint Commission and the
03:26:49 5 Veterans Affairs Health System?

03:26:57 6 **A** Well, but those aren't insurers per say.

03:27:00 7 **Q** Well, fair enough, but the Joint Commission is
03:27:02 8 followed by insurance companies in terms of what they cover
03:27:04 9 or what they don't?

03:27:05 10 **A** So the Joint Commission is an accreditation
03:27:08 11 organization that -- you know that gives hospitals or
03:27:15 12 healthcare institutions a seal of approval, I believe, as it
03:27:19 13 were.

03:27:19 14 **Q** Yeah. And the Joint Commission's recommendations are
03:27:23 15 followed by many insurance carriers and by the Government,
03:27:26 16 Medicare and Medicaid, in terms of what's covered. That's
03:27:28 17 why you're highlighting it here.

03:27:30 18 **A** Well, but the -- the point that I'm making here is
03:27:34 19 that the Joint Commission embraced the concept of pain as
03:27:38 20 the fifth vital sign, so it wasn't that the Joint Commission
03:27:41 21 was saying you should cover more opioids. It was that the
03:27:45 22 Joint Commission became -- was another organization that
03:27:47 23 embraced the concept that in addition to heart rate and
03:27:52 24 breathing rate and such, that pain should be considered a
03:27:55 25 fifth vital sign.

03:27:56 1 **Q** Right. Which drove more prescribers to write opioid
03:27:59 2 prescriptions than they had in the past?

03:28:00 3 **A** I believe that contributed, yes.

03:28:02 4 **Q** Doctor, going back to -- if you want to just bear with
03:28:14 5 me for a second -- to your expert report.

03:28:23 6 I want to turn to Tab A and your paper that talks
03:28:27 7 about the opioid epidemic.

03:28:29 8 If you could find it for us.

03:28:30 9 **A** Yes, I have it.

03:28:31 10 **Q** Okay. And this was the paper you were talking about
03:28:33 11 that was attached to your Congressional testimony, right?

03:28:36 12 **A** Yes. It's not -- I mean, I wouldn't -- it's not a
03:28:40 13 peer-reviewed publication, it wasn't sent to a journal, but
03:28:44 14 it's a white paper or a monograph that we produced, yes.

03:28:47 15 **Q** But when you were talking to our jurors about there
03:28:49 16 was something attached to your Congressional testimony, this
03:28:51 17 is what you were referring to?

03:28:52 18 **A** That's correct.

03:28:52 19 **Q** And this was in 2017, Doctor?

03:28:55 20 **A** Yes.

03:28:56 21 **Q** And you talk -- I'm sorry about the focus, Doctor.
03:29:09 22 Bear with me here.

03:29:14 23 You talked, Doctor, in your paper on page 5 about
03:29:19 24 "prescription opioids serving an invaluable role for the
03:29:21 25 treatment of cancer pain and pain at the end of life,"

03:29:24 1 right?

03:29:24 2 **A** Yes.

03:29:24 3 **Q** And then talk about "how their overuse as well as the
03:29:30 4 increasing availability of heroin and illicit fentanyl have
03:29:32 5 contributed to the highest rates of overdose and opioid
03:29:36 6 addiction in U.S. history," right?

03:29:38 7 **A** Yes.

03:29:38 8 **Q** And further in your report, Doctor, you talk about
03:29:43 9 some of the other contributors to the opioid epidemic. And
03:29:47 10 one of the things you talk about, sir, is people getting
03:29:53 11 prescriptions from stealing them out of medicine cabinets or
03:29:57 12 from family and friends and failure of people to dispose of
03:30:00 13 opioid properly, right?

03:30:01 14 **A** Yes.

03:30:01 15 **Q** In fact, you talk about in your paper that
03:30:06 16 approximately 70 percent of people who report nonmedical use
03:30:10 17 of prescription opioids state their most recently used drug
03:30:14 18 came from a friend or family member. Right? 70 percent.

03:30:22 19 **A** Yes, I believe so, yes.

03:30:24 20 **Q** Okay. And then you talk about how most people -- in
03:30:32 21 fact, Doctor, this has been an issue for you that you've
03:30:35 22 written about and talked about, that so many people don't
03:30:38 23 dispose of their unused opioid prescriptions properly?

03:30:42 24 **A** I think that's important, and that features in
03:30:46 25 addressing the harms that continue to accrue.

03:30:49 1 **Q** And we can look at it, but you've testified before
03:30:52 2 Congress thousands and thousands of prescriptions, I think
03:30:57 3 you even gave a tonnage, that are not disposed of properly
03:31:01 4 and make their way into the streets.

03:31:05 5 **A** Well, again, for the specifics, I'd want to see that,
03:31:09 6 but I think it's true that there are -- that many opioids
03:31:12 7 aren't safely stored or disposed of, and that that is yet
03:31:16 8 another layer of the onion here.

03:31:18 9 **Q** Yeah. And the pharmacies, they're out of it by then.
03:31:22 10 They dispensed the medicine, they're not responsible for
03:31:25 11 people handing it to their friends or for people stealing it
03:31:28 12 out of medicine cabinets, fair?

03:31:29 13 **A** Well, I think I've written and I would say that we
03:31:32 14 need to do a better job of getting those medicines back, so
03:31:40 15 to speak, but I think that may be beyond scope here.

03:31:42 16 Yes, after a medicine is dispensed, it's no longer
03:31:46 17 within the four walls of the pharmacy.

03:31:48 18 **Q** Yeah. And the truth is, Doctor, you don't know what
03:31:52 19 Giant Eagle or others have done on the effort to have kiosks
03:31:55 20 in their stores or otherwise help people dispose of unused
03:31:59 21 medicine? You haven't reviewed that data?

03:32:02 22 **A** I think that's somewhat not true. In other words, I
03:32:05 23 have looked at take back programs, and I've looked at safe
03:32:12 24 disposal bags and I have looked at the regulatory policies
03:32:17 25 that may prohibit pharmacies from doing more take back, and

03:32:21 1 I've looked at many of those matters at a fairly high level.

03:32:25 2 Q Okay. I guess my question wasn't clear.

03:32:27 3 But you don't know what Giant Eagle or the other
03:32:29 4 pharmacies are doing in Lake and Trumbull County on these
03:32:34 5 take back programs?

03:32:36 6 A That's correct, I don't think that I'd explored that
03:32:40 7 in detail in my report.

03:32:43 8 Q But in your report you talk about how 70 percent of
03:32:45 9 the people who are getting nonmedical use prescription
03:32:49 10 opioids say they're getting them from friends or family
03:32:51 11 members?

03:32:51 12 A I'm sorry, I meant in my expert report, so I'm sorry
03:32:54 13 if I confused the matter.

03:32:56 14 Can you please ask your question again?

03:32:58 15 Q Sure, sure.

03:32:59 16 In your expert report you talk about how 70 percent of
03:33:02 17 people who report nonmedical use of prescription opioids
03:33:05 18 state their most recently used drug came from a friend or a
03:33:08 19 family member, not from a pharmacy.

03:33:10 20 A This is not my expert report that we're reviewing.

03:33:12 21 Q Your paper. My bad. Your paper.

03:33:15 22 A I'm sorry, can you please ask the question?

03:33:16 23 Q I'll try it one more time, Doctor. It's late.

03:33:20 24 In your published -- in your paper that you attached
03:33:22 25 to your Congressional testimony, you tell Congress that 70

03:33:25 1 percent of people who report nonmedical use of prescription
03:33:31 2 opioids start their most recently used drug from friend or
03:33:33 3 family member.

03:33:34 4 **A** Correct. The most recently used opioid, yes.

03:33:38 5 **Q** And you talk about how that prescription opioids are
03:33:46 6 diverted intentionally while in other cases they're used
03:33:48 7 without knowledge of the person for whom they were
03:33:50 8 prescribed, right?

03:33:51 9 **A** Yes.

03:33:51 10 **Q** In other words, people are stealing them out of their
03:33:54 11 medicine cabinets, out of their cars, et cetera?

03:33:55 12 **A** They're given, they're taken, they're borrowed,
03:33:59 13 they're bartered. So all of that is in the mix of the --
03:34:03 14 and contributes to some of the harms that we see from such
03:34:08 15 widespread prescribing and dispensing of opioids in
03:34:12 16 communities like Lake and Trumbull.

03:34:14 17 **Q** Yeah, a major -- 70 percent, a major contributor
03:34:18 18 according to your paper to the opioid epidemic?

03:34:19 19 **A** No, that 70 percent does not represent some fraction
03:34:23 20 of the epidemic that I think is because of the diversion of
03:34:27 21 opioids. That's referring to a different matter. It's not
03:34:30 22 referring to the amount of the harm that I think is from
03:34:33 23 this problem. It's just referring to the fact that more
03:34:37 24 than half of the people, 70 percent of people at this time
03:34:41 25 that I gave this testimony, from the data that I used, about

03:34:44 1 70 percent of people who reported that they were using
03:34:48 2 nonmedical opioid use reported that their most recent source
03:34:52 3 was from a friend or family member.

03:34:54 4 **Q** And maybe my question wasn't clear, Doctor, but you're
03:34:57 5 highlighting it because it's a significant contributor to
03:34:59 6 the opioid epidemic, the fact that people are stealing it
03:35:01 7 from medicine cabinets and giving it to their friends?

03:35:03 8 **A** Well, they may or may not be stolen. They may be --
03:35:07 9 again, I mean, this isn't necessarily theft, but the point
03:35:10 10 here is that many people using opioids nonmedically,
03:35:17 11 prescription opioids nonmedically, get them from friends or
03:35:20 12 family members.

03:35:20 13 **Q** And you say without the knowledge of the person for
03:35:23 14 whom they're prescribed?

03:35:24 15 **A** That happens, yes.

03:35:32 16 **Q** In your paper, Doctor, on page 19, you also talk about
03:35:41 17 how "prescription opioids have been demonstrated as being
03:35:55 18 efficacious for short-term treatment of chronic noncancer
03:35:59 19 pain such as caused by headaches, fibromyalgia, or lower
03:36:02 20 back pain."

03:36:03 21 Right, Doctor?

03:36:04 22 **A** Yes.

03:36:08 23 **Q** But then you go on to say in the last sentence, sir,
03:36:11 24 "that misperceptions on the part of prescribers and patients
03:36:15 25 regarding the appropriateness of opioids for chronic pain

03:36:18 1 persist," right?

03:36:22 2 **A** I'm sorry, the last sentence.

03:36:25 3 **Q** Persist? "That misperceptions on the part of
03:36:29 4 prescribers and patients regarding the appropriateness of
03:36:31 5 opioids for chronic pain persist."

03:36:35 6 **A** Yes.

03:36:35 7 **Q** Okay. In other words, doctors are still misperceiving
03:36:39 8 or not understanding the right way to prescribe opioids; is
03:36:43 9 that essentially what you're saying?

03:36:44 10 **A** I mean, there's been a culture of -- there's been a
03:36:49 11 culture that has had lots of contributors that has
03:36:55 12 contributed to communities, doctors, patients others
03:36:59 13 believing that they're safer than they really are and that
03:37:01 14 they're more effective than they really are.

03:37:03 15 **Q** Causing doctors to prescribe them for what they
03:37:06 16 believe is good reason, legitimate reason, when you say
03:37:10 17 they're wrong?

03:37:11 18 **A** Well, I'm not saying any given doctor is wrong, but I
03:37:14 19 am saying that unfortunately, the prescribing and evidence
03:37:18 20 don't align well.

03:37:20 21 **Q** Fair enough.

03:37:24 22 And, Doctor, I think you told our jury that your paper
03:37:28 23 here said something about pharmacies, and I want to just
03:37:32 24 turn to that if we could. Or if you could point us to it.

03:37:44 25 **A** Well, on page 14, under the third bullet I write,

03:37:48 1 "Pharmacy benefits managers and pharmacies, two important
03:37:52 2 stakeholders in the supply chain whose policies and
03:37:55 3 procedures can reduce unsafe opioid use."

03:37:59 4 **Q** Yeah. And when we look at your expanded statement
03:38:02 5 about that, what you talk about is policy benefit managers
03:38:06 6 shouldn't be covering, should not be insuring for pharmacies
03:38:11 7 to dispense opioids, right?

03:38:18 8 MR. LANIER: I'm sorry. I am lost on the
03:38:19 9 page.

03:38:20 10 MS. SULLIVAN: I am trying to get it here.

03:38:21 11 **Q** Do you remember that statement, Doctor?

03:38:23 12 **A** It would be helpful to see where specifically you're
03:38:25 13 referring to.

03:38:33 14 **Q** Let me find it here. I'm trying to give it to you.
03:38:38 15 Give me one second.

03:38:41 16 MS. SULLIVAN: 25. Thank you, Chantale.

03:38:53 17 That wasn't the one I was thinking here. We'll go
03:38:55 18 back to that, Doctor. Oh, here we go.

03:39:05 19 **Q** Here we go. On page 16, Doctor.

03:39:12 20 **A** Okay.

03:39:12 21 **Q** Do you see that?

03:39:13 22 What you say is that "third-party healthcare payers
03:39:16 23 and their pharmacy benefit managers can intervene with
03:39:19 24 prescribers, dispensers, and patients."

03:39:23 25 Do you see that?

03:39:23 1 **A** Yeah, there I'm referring to the use of prescription
03:39:26 2 monitoring data and making the point that payers and PBMs
03:39:30 3 can use that data to their advantage.

03:39:32 4 **Q** Yeah, to stop paying for opioid prescriptions, right?

03:39:36 5 **A** Well, I would say to more -- to ensure that people
03:39:40 6 getting opioids are -- to try to reduce the unsafe
03:39:46 7 prescribing and dispensing of opioids.

03:39:48 8 **Q** Yeah, in other words, if PBMs don't cover it with
03:39:52 9 insurance, the patients, many patients won't be able to get
03:39:55 10 it, and prescribers will stop prescribing for those
03:39:59 11 patients, perhaps, and then pharmacies can't dispense it,
03:40:03 12 that's essentially what you're saying?

03:40:04 13 **A** I mean, well, pharmacy benefits managers are another
03:40:07 14 important, you know, party in the mix is what I would say,
03:40:10 15 because they're designing the coverage for opioids. And of
03:40:13 16 course, if they increase the out-of-pocket costs or, you
03:40:17 17 know, put opioids on a different tier, that can affect how
03:40:21 18 many people use them.

03:40:22 19 But, you know, it's also a tricky job because, you
03:40:27 20 know, there are unintended consequences of those sorts of
03:40:30 21 policies also.

03:40:31 22 But the point that I'm making here is that pharmacy
03:40:34 23 benefits managers, PBMs, are a party that has some role
03:40:38 24 here, just as pharmacies are and just as many other parties
03:40:41 25 that we discuss in this report.

03:40:43 1 **Q** Doctor, one thing you never say in your papers or in
03:40:47 2 any of your testimony to Congress is that pharmacies
03:40:50 3 contributed to the opioid epidemic. That's not in any of
03:40:53 4 your testimony or any of your papers, correct?

03:41:00 5 **A** I don't know. I don't believe it's in the testimony
03:41:04 6 of the -- the Congressional testimony, which I've reviewed
03:41:08 7 recently, but I don't know whether or not I've spoken
03:41:12 8 directly in my papers to the role that pharmacies themselves
03:41:18 9 sort of netting out PBMs and netting out rogue prescribers
03:41:24 10 and all of that, I don't know if I've spoken to the way that
03:41:27 11 pharmacies may or may not have contributed.

03:41:32 12 **Q** Doctor, the truth is you have written extensively
03:41:34 13 about the opioid epidemic, you've testified before Congress
03:41:37 14 a bunch. You have never once testified or concluded in any
03:41:41 15 of your papers that pharmacies contributed to the opioid
03:41:45 16 epidemic?

03:41:46 17 **A** Well, I believe I answered that, and which is to say
03:41:49 18 that I don't believe in my Congressional testimony that I
03:41:54 19 discussed the role of pharmacies. I wasn't asked to and I
03:41:57 20 didn't. But I'm not -- I just can't confidently say whether
03:42:04 21 or not in the course of the papers that I've written about
03:42:08 22 opioids, whether or not I've touched upon pharmacies.

03:42:14 23 **Q** You don't know. Sitting here today you have no idea
03:42:17 24 whether you've ever done that in any of your papers?

03:42:19 25 **A** Well, I -- I mean, there are some papers where I would

03:42:23 1 tend to look to see, but I can't say with confidence one way
03:42:28 2 or the other.

03:42:28 3 **Q** And when you testified before Congress, you were
03:42:31 4 specifically talking about the opioid crisis and discussing
03:42:33 5 the causes of the opioid crisis. We looked at some of that
03:42:35 6 testimony.

03:42:35 7 **A** Well, I was -- I mean, I wanted to be forward thinking
03:42:38 8 with Congress because it was a unique opportunity to make
03:42:41 9 recommendations to Senators and Congresspeople about what I
03:42:49 10 thought should be done. But I think it's helpful to begin
03:42:52 11 by briefly looking backwards before making recommendations
03:42:56 12 about where we should go from here.

03:42:58 13 **Q** But, Dr. Alexander, you were candid with Congress
03:43:02 14 about pharmaceutical manufacturers being responsible for the
03:43:05 15 opioid crisis, the FDA being responsible, the DEA being
03:43:09 16 responsible. What you never said was that pharmacies were
03:43:12 17 even a little bit responsible when you weren't testifying
03:43:14 18 for plaintiffs' lawyers, right?

03:43:17 19 **A** Well, again, I mean, I think we've reviewed the way
03:43:23 20 that I framed the history of the epidemic. I certainly have
03:43:28 21 written about and discussed the high -- the fact that many
03:43:36 22 people getting opioids are high risk individuals. I've
03:43:40 23 written entire papers on identifying these high risk
03:43:45 24 individuals. I've used claims, pharmacy claims, to identify
03:43:48 25 them. I've used pharmacy claims to identify subgroups of

03:43:54 1 patients that I felt were at higher than average risk.

03:43:58 2 I don't think that I've focused on specifically what
03:44:00 3 pharmacies should have or didn't or did do to identify and
03:44:07 4 intervene upon those patients.

03:44:08 5 **Q** Yeah. After your extensive analysis of the
03:44:11 6 literature, your papers about causes of the opioid crisis,
03:44:15 7 never in your testimony to Congress, and I believe you
03:44:17 8 testified before Congress at least three times on the opioid
03:44:20 9 crisis, right?

03:44:20 10 **A** I believe twice, once to the senate and once to the
03:44:24 11 U.S. House of Representatives.

03:44:25 12 **Q** Fair enough. And in neither of those times did you
03:44:27 13 even mention pharmacies as even a small contributor to the
03:44:30 14 opioid crisis, fair?

03:44:34 15 **A** I think I mentioned that there were -- I would want to
03:44:38 16 see for sure, but I certainly have said, and I think we've
03:44:41 17 reviewed work that I've done highlighting that there are
03:44:43 18 multiple and complex causes of the epidemic. And it wasn't
03:44:47 19 my purpose there to try to -- to list them all out and to
03:44:53 20 discuss the various contributions of the FDA versus
03:44:57 21 pharmaceutical companies versus patients that are trying to
03:45:02 22 pull one over on their doctor.

03:45:03 23 **Q** And, Doctor, maybe my question isn't clear enough.

03:45:07 24 You did list out to the Congress what you believe were
03:45:10 25 the major causes of the opioid epidemic: Manufacturers, the

03:45:13 1 FDA, and the DEA.

03:45:15 2 You did not in any of your testimony mention

03:45:19 3 pharmacies in any way?

03:45:20 4 **A** I believe that may be true.

03:45:31 5 **Q** Okay. Let's see if we can wrap this up here.

03:45:34 6 And, Doctor, you did also -- you also testified at a

03:45:40 7 committee meeting of the Veterans Affairs at the United

03:45:44 8 States Senate, Congress?

03:45:46 9 **A** Yeah, that's my Senate testimony.

03:45:50 10 **Q** And that's 7 in your binder?

03:46:01 11 **A** Okay.

03:46:01 12 **Q** And if we can look at page 41.

03:46:10 13 That's you, sir, right?

03:46:11 14 **A** Yes.

03:46:11 15 **Q** And here you were asked some recommendations about

03:46:20 16 what we can do to address the opioid epidemic, right?

03:46:23 17 You're talking about that?

03:46:23 18 **A** Yes.

03:46:23 19 **Q** And one of the things you say is we got to make these

03:46:28 20 prescribing doctors do better. We've got to improve

03:46:32 21 prescribing practices, right?

03:46:33 22 **A** Yes.

03:46:34 23 **Q** And you also -- so that was the first thing. Let's

03:46:37 24 improve prescribing practices.

03:46:38 25 And then you also say, we got to get people effective

03:46:43 1 treatment, right?

03:46:47 2 **A** Yes. I mean, when I speak -- and frankly, when I
03:46:51 3 speak to prescribing practices, the reason this took place,
03:46:54 4 I believe, was because of the number of individuals within a
03:46:57 5 particular veterans facility that were getting dangerous
03:47:02 6 combinations of opioids, benzodiazapines, and muscle
03:47:06 7 relaxants. And I believe that at the time, maybe in
03:47:09 8 Wisconsin or somewhere, there was a very public death, a
03:47:13 9 tragic death of a veteran because of this combination of
03:47:17 10 drugs.

03:47:17 11 And so what I was saying here was registering my
03:47:22 12 agreement that we need to be sure that we reduce dangerous
03:47:26 13 combinations of medicines such as opioids, benzodiazapines,
03:47:30 14 and muscle relaxants.

03:47:31 15 **Q** Yeah, that the doctors prescribing to these people
03:47:34 16 need to do better, right?

03:47:36 17 **A** Correct.

03:47:37 18 **Q** And second, that we need people who are addicted
03:47:42 19 access to treatment with medicines like -- can you pronounce
03:47:47 20 that for me, Doctor?

03:47:48 21 **A** Well, buprenorphine.

03:47:50 22 **Q** Buprenorphine and methadone, right?

03:47:54 23 **A** Yes.

03:47:54 24 **Q** Effective in helping individuals regain control over
03:47:58 25 their lives, right?

03:47:59 1 **A** Correct.

03:47:59 2 **Q** And the third thing that you mentioned to try to
03:48:02 3 address the opioid crisis is to get rid of millions of
03:48:08 4 pounds of unwanted and unused medicines sitting in bathrooms
03:48:11 5 and cabinets and bedroom nightstands all over America,
03:48:14 6 right?

03:48:15 7 **A** Correct.

03:48:34 8 **Q** Doctor, I want to go back before I wrap up here to
03:48:37 9 some of the slides you looked at with Mr. Lanier.

03:48:39 10 And I think in fairness that you made clear, sir, that
03:48:42 11 these terrible death slides are all not just prescription
03:48:48 12 medicines, they're illicit fentanyl and heroin and other
03:48:50 13 opioids, right?

03:48:51 14 **A** Yes.

03:48:51 15 **Q** And that would be true for all of these slides that
03:48:56 16 we're looking at, the Lake and county -- the opioid death
03:49:04 17 numbers for Lake County and Trumbull County, that's not just
03:49:09 18 prescription medicines, that's illicit fentanyl and heroin
03:49:13 19 and other opioids, right?

03:49:14 20 **A** It is. And we have information about the proportion
03:49:18 21 of all of those individuals still that have prescription
03:49:25 22 opioids detectable at the time of death.

03:49:27 23 And so for example in the past three years, I believe
03:49:29 24 that about 15 to 17 percent of individuals on average in
03:49:35 25 Lake and Trumbull Counties that have died from opioids have

03:49:39 1 prescription opioids detectable in the mix, so to speak.

03:49:43 2 So, you know, illicit fentanyl and heroin are

03:49:46 3 important to address, prescription opioids are important to

03:49:50 4 address. They're two sides of the same coin.

03:49:52 5 **Q** And I think, Dr. Alexander, and we can look at it, but

03:49:57 6 in your report you talked about the three waves of the

03:49:59 7 opioid crisis, that from 2000 -- starting in 2010, heroin

03:50:03 8 became a more important problem than the prescription

03:50:07 9 medicines, and then starting in 2016 illicit fentanyl became

03:50:12 10 the problem in terms of causing deaths?

03:50:14 11 **A** Yeah. I mean, I would say it caused more deaths. I

03:50:17 12 would probably not say it's a more important problem.

03:50:20 13 They're all really important problems but --

03:50:21 14 **Q** Agreed, agreed. Bad question. Agreed. All important
03:50:26 15 problems.

03:50:26 16 But in terms of the number of deaths caused by illicit

03:50:29 17 illegal fentanyl in Lake or Trumbull County, the

03:50:32 18 overwhelming majority of opioid deaths were in those

03:50:35 19 counties were reportedly from illicit fentanyl over the last

03:50:39 20 couple years?

03:50:39 21 **A** Well, fentanyl is detectable in the people who have
03:50:43 22 died, but as I just -- the point that I was just making was
03:50:46 23 that prescription opioids are also detectable in an
03:50:49 24 important subset of those individuals, even recent deaths.

03:50:57 25 **Q** And if we could just turn to -- and, Doctor, many of

03:51:05 1 those -- unfortunately, many of the deaths caused by
03:51:08 2 prescription opioids happen to people who got their
03:51:11 3 prescriptions from good doctors who were prescribing the
03:51:15 4 medicine legitimately, believing that the medicines weren't
03:51:19 5 addictive or that they could help their patients?

03:51:22 6 **A** Well, I mean, people are dying from opioids
03:51:26 7 dispensed -- if you're looking just about people dying from
03:51:29 8 prescription opioids, there are people that are overdosing,
03:51:32 9 that are using the medicines as prescribed, and there are
03:51:36 10 others that are overdosing and dying that are using the
03:51:41 11 medicines nonmedically.

03:51:42 12 So I have a bit of a hard time generalizing in some
03:51:49 13 broad statement. They're both important and we can do
03:51:51 14 better with both of these categories. We can reduce
03:51:55 15 nonmedical use, but we can also improve the safe use of
03:51:59 16 opioids even among people that are using them as prescribed.

03:52:01 17 **Q** Yeah, in other words, Doctor, many people who use them
03:52:03 18 as prescribed, legitimate prescriptions, die from opioid
03:52:06 19 addiction and overdose?

03:52:10 20 **A** Well, I mean, someone that has opioid addiction is not
03:52:13 21 just taking, like, one Vicodin twice a day. So I guess I'm
03:52:19 22 having a little bit of a hard time generalizing here. I
03:52:25 23 mean, generally people with opioid addiction, addiction is
03:52:28 24 characterized by compulsive use, and in part to avoid the
03:52:31 25 bad unpleasant feelings of withdrawal.

03:52:36 1 So I have a hard time -- I guess I didn't fully
03:52:38 2 understand your last statement.

03:52:39 3 **Q** Yeah, we talked a little bit about rogue doctors and
03:52:42 4 doctor shoppers, which you testified were extremely or
03:52:46 5 exceedingly rare.

03:52:47 6 But my question relates to people who get their
03:52:50 7 prescriptions legitimately, in other words, they're not
03:52:53 8 doctor shopping, they're not getting them from rogue
03:52:56 9 prescribers, they're getting them from good doctors and they
03:52:59 10 become addicted.

03:53:00 11 **A** So addiction does happen among individuals --
03:53:03 12 addiction is not a choice, any more than someone chooses to
03:53:08 13 have colon cancer or multiple sclerosis. And addiction does
03:53:12 14 happen to people that are receiving opioids that are
03:53:14 15 prescribed by a doctor. But, you know, sort of the
03:53:16 16 legitimate prescriptions and good doctors, I guess addiction
03:53:24 17 happens, there are many different pathways that lead to
03:53:26 18 addiction.

03:53:26 19 **Q** And, Doctor, just going back to your expert report
03:53:31 20 briefly.

03:54:04 21 On page 8, Doctor.

03:54:06 22 **A** Mm-hmm.

03:54:06 23 **Q** I just want to --

03:54:09 24 **A** Yes.

03:54:09 25 **Q** I just want to get it so I can see it here.

03:54:20 1 On page 8, paragraph 21. Do you see where you say,
03:54:25 2 "As observed nationally and within Ohio, there was a first
03:54:28 3 rise in prescription opioid-related deaths in the early
03:54:31 4 2000s, followed by a rapid increase in heroin overdose
03:54:35 5 deaths beginning in 2010, and a sharp increase in fentanyl
03:54:38 6 overdose deaths in 2016." Right?

03:54:40 7 **A** Yes.

03:54:41 8 **Q** And then you go on to say that "The impact of illicit
03:54:45 9 fentanyl has been especially severe in the communities
03:54:48 10 relative to other areas in the U.S.," right?

03:54:51 11 **A** Yes.

03:54:51 12 **Q** So the impact of illicit fentanyl in Lake and Trumbull
03:54:55 13 County, in your view, has been especially severe?

03:54:56 14 **A** Yes.

03:54:58 15 **Q** And that's not something that pharmacies prescribe.
03:55:03 16 Illicit fentanyl comes from foreign sources, drug cartels,
03:55:05 17 et cetera?

03:55:05 18 **A** That's correct, although in the next sentence I talk
03:55:08 19 about the clear link between prescription opioids and the
03:55:11 20 use of illicit fentanyl and heroin.

03:55:14 21 **Q** Which you talked to Mr. Lanier about. But as you've
03:55:16 22 acknowledged, you're not a specialist in addiction
03:55:19 23 treatment?

03:55:21 24 **A** Well, what I was referring to was whether I would call
03:55:23 25 myself a clinical addiction specialist. And if I ran into

03:55:27 1 someone on the street and told them I was a doctor and they
03:55:29 2 said what kind, I would say I'm a general internist. I
03:55:33 3 wouldn't describe myself first as an addiction specialist,
03:55:37 4 but I have lots of -- lots of the studies that I've
03:55:40 5 performed are focused on addiction.

03:55:43 6 **Q** And, Doctor, reviewing papers, not treating patients
03:55:47 7 with addiction?

03:55:49 8 **A** Unfortunately, I have seen many, many patients
03:55:52 9 impacted by this epidemic.

03:55:55 10 **Q** And as you said in your expert report, you refer them
03:55:59 11 to addiction specialists?

03:56:00 12 **A** Not universally. As I believe I said earlier, it's
03:56:03 13 just like someone that comes to me with a stomachache. You
03:56:06 14 know, if they have blood in their stool and they are anemic
03:56:09 15 and they look pale, I might send them immediately to a GI
03:56:15 16 specialist. But if they -- you know, but if they look
03:56:18 17 pretty well and they want to try some treatment, like an
03:56:23 18 antacid, and I think it's safe and reasonable, then I might
03:56:25 19 not refer them.

03:56:26 20 So it's the same way that I would manage anything else
03:56:29 21 as when someone comes to me that I identify that has signs
03:56:31 22 of either nonmedical opioid use or opioid addiction.

03:56:35 23 **Q** And, Dr. Alexander, you mention that you've made --
03:56:38 24 your company has made \$6 million working for plaintiffs'
03:56:42 25 lawyers in opioid litigation?

03:56:44 1 **A** I believe over four or five years the company of 20,
03:56:47 2 which has about 20, which has about five individuals that
03:56:52 3 are master's and doctoral trained who have worked primarily
03:56:55 4 on opioid litigation matters, yes, that the company has made
03:56:59 5 \$6 million.

03:57:00 6 **Q** And you're an owner of the company?

03:57:02 7 **A** I am a co-founder, and I'm one of three equity
03:57:08 8 holders. So there are three of us that have the ownership
03:57:10 9 of the company.

03:57:11 10 **Q** So you share in the profits of the company?

03:57:12 11 **A** I do.

03:57:13 12 **Q** That's not something you mentioned in your questioning
03:57:16 13 with Mr. Lanier, that you were an owner who shares in the
03:57:19 14 profit of the \$6 million.

03:57:20 15 **A** Well, I wasn't asked, but I'm happy for people to know
03:57:24 16 my role in the company.

03:57:29 17 **Q** Just to wrap up, Doctor, in terms of the efforts by
03:57:32 18 these pharmacies to address the opioid crisis, have you
03:57:36 19 looked at what they've done to counsel patients who come and
03:57:40 20 pick up prescriptions, what Giant Eagle, Walgreens, Walmart,
03:57:46 21 CVS have done on that score, in Lake and Trumbull County?

03:57:55 22 **A** Well, in the counties, my primary learning, my primary
03:57:58 23 exposure to what the pharmacies have done or not done has
03:58:04 24 been through a review of a portion of Mr. Catizone's report
03:58:08 25 and Mr., is it Manning's report? I'm forgetting the other

03:58:12 1 gentleman, but --

03:58:13 2 MR. LANIER: McCann.

03:58:14 3 THE WITNESS: McCann, thank you.

03:58:15 4 **A** So that's the way that I've learned what I've learned.

03:58:17 5 But that wasn't what I was asked to do in this case.

03:58:20 6 **Q** And I think as you mentioned, you actually didn't look
03:58:22 7 at any documents for any of these companies?

03:58:25 8 **A** I don't believe that I did because I didn't believe
03:58:27 9 and I believe the plaintiffs didn't believe that that was
03:58:30 10 important in order for me to be able to be of assistance to
03:58:35 11 the courts.

03:58:36 12 **Q** So you have no evidence or opinion about how these
03:58:41 13 companies or specifically Giant Eagle set about policing
03:58:48 14 filling illegitimate prescriptions?

03:58:51 15 **A** Well, I don't have a legal opinion in sort of in the
03:58:53 16 legal sense. Again, I read portions of Mr. Catizone's
03:58:56 17 report and Mr. McCann's report, and so I have some beliefs
03:59:00 18 about that. But I don't have a legal opinion about the
03:59:03 19 matters.

03:59:03 20 **Q** In other words, you haven't actually reviewed the data
03:59:06 21 yourself?

03:59:06 22 **A** Well, I haven't done statistical analyses on the raw
03:59:10 23 data, no.

03:59:11 24 **Q** Okay.

03:59:12 25 MS. SULLIVAN: I have nothing further. Thank

03:59:14 1 you, Doctor.

03:59:17 2 THE WITNESS: Thank you very much.

03:59:19 3 THE COURT: Thank you, Ms. Sullivan.

03:59:21 4 Any of the other defendants wish to cross-examine
03:59:23 5 Dr. Alexander?

03:59:24 6 MR. DELINSKY: No questions, Your Honor.

03:59:25 7 MR. MAJORAS: No, Your Honor.

03:59:27 8 MR. SWANSON: Nothing for Walgreens.

03:59:28 9 THE COURT: Okay. Then we'll have redirect.

03:59:30 10 But also I want to make sure if any of the jurors have
03:59:32 11 questions, they should provide those to Mr. Pitts who will
03:59:35 12 show them to all counsel.

03:59:42 13 (Juror question review.)

04:02:33 14 MS. FIEBIG: Your Honor, could we have a side
04:02:35 15 bar?

04:03:08 16 (At side bar at 4:03 p.m.)

04:03:08 17 MS. FIEBIG: Your Honor one of the juror
04:03:10 18 questions asked the expert what his recommendations were for
04:03:14 19 what pharmacies should do in order to -- I apologize for the
04:03:19 20 echo.

04:03:20 21 But I believe that it says --

04:03:24 22 MR. WEINBERGER: Here, I'll read it if you
04:03:25 23 don't mind.

04:03:26 24 MS. FIEBIG: I have it. It says, "What is
04:03:28 25 your recommendation for pharmacy/companies to improve

04:03:30 1 policies/procedures to reduce the opioid epidemic?"

04:03:33 2 And the defendants would contend that that's out of

04:03:36 3 bounds for the litigation.

04:03:37 4 THE COURT: Well, I told the jurors that not

04:03:38 5 all the questions are going to be asked, some may not be

04:03:41 6 relevant. So no one should ask that question.

04:03:44 7 MS. FIEBIG: Thank you, Your Honor.

04:04:00 8 (In open court at 4:04 p.m.)

04:04:01 9 MR. LANIER: Your Honor, could you explain

04:04:02 10 that to the jury, please?

04:04:03 11 THE COURT: All right.

04:04:05 12 MR. LANIER: Thank you.

04:04:09 13 THE COURT: Ladies and gentlemen, as I

04:04:09 14 indicated earlier, I have this practice of permitting jurors

04:04:12 15 to suggest questions which I give to counsel. And they may

04:04:18 16 ask them, they may not. If they don't, you're not to draw

04:04:22 17 any negative conclusion against any counsel or any party.

04:04:25 18 The question may be better or more appropriate for another

04:04:28 19 witness or it might be on something that's not relevant to

04:04:31 20 the case, so -- but we appreciate all of your questions.

04:04:44 21 MR. LANIER: So as I understand it, Your

04:04:46 22 Honor, I can ask the other ones except for that one?

04:04:49 23 THE COURT: Well, I didn't look at any of the

04:04:51 24 questions, so...

04:04:53 25 MR. LANIER: Okay.

04:04:55 1 - - - - -

04:04:56 2 REDIRECT EXAMINATION

04:04:56 3 BY MR. LANIER:

04:04:57 4 **Q** All right. Dr. Alexander, road map, three stops:
04:05:05 5 Your opinions in this case, causes of the epidemic, and your
04:05:10 6 report. Although I'm going to sprinkle in the jury
04:05:14 7 questions as I am allowed to, okay?

04:05:19 8 **A** Great.

04:05:19 9 **Q** Opinions in this case. Well, they didn't really
04:05:23 10 attack any of those, did they?

04:05:25 11 MS. SULLIVAN: Objection, Your Honor. That's
04:05:26 12 argumentative.

04:05:27 13 **Q** Let me ask it this way.

04:05:29 14 THE COURT: I sustain the objection to that
04:05:31 15 question.

04:05:31 16 **Q** I'll reask it.

04:05:33 17 Sir, do you need to defend any of your opinions in
04:05:36 18 this case you have offered?

04:05:37 19 **A** I don't believe so.

04:05:38 20 **Q** Thank you.

04:05:39 21 Next stop: Causes of the epidemic.

04:05:45 22 Did we hire you or retain you or ask you to testify
04:05:50 23 about causes of the epidemic?

04:05:53 24 **A** No.

04:05:54 25 **Q** If we had hired you, retained you, and asked you to

04:06:01 1 research and to answer those questions that you were asked
04:06:04 2 by Ms. Sullivan, could you?

04:06:06 3 **A** Yes.

04:06:07 4 **Q** Ms. Sullivan pointed out your Congressional testimony,
04:06:13 5 but I fear some of what you said may have been gone over
04:06:17 6 rather quickly, and I'd like to look at it carefully,
04:06:19 7 please.

04:06:19 8 MS. SULLIVAN: Objection, Your Honor, to the
04:06:21 9 preamble and the lawyer argument.

04:06:23 10 THE COURT: Overruled.

04:06:25 11 **Q** Do you have that in front of you or able to read the
04:06:28 12 monitor?

04:06:28 13 **A** Yes, I can read the monitor. Thank you.

04:06:30 14 **Q** All right. Page 88. You said, "We are missing more
04:06:44 15 than half a million Americans from overdose that should be
04:06:48 16 with us today. People like Steve Rummler and so many
04:06:55 17 others, incredibly more deaths from opioids are expected in
04:06:59 18 2017 than ever before.

04:07:02 19 "As the Commission's report makes clear, the origins
04:07:06 20 of the epidemic are," what's the word you used?

04:07:10 21 **A** "Multiple."

04:07:13 22 **Q** "But arise within the healthcare system, including
04:07:20 23 unsubstantiated claims about the safety and effectiveness,
04:07:24 24 multifaceted campaigns by pharmaceutical companies, and the
04:07:27 25 failure of the FDA and the DEA to regulate these products

04:07:31 1 appropriately."

04:07:32 2 Do you stand by that testimony?

04:07:34 3 **A** Yes, I do.

04:07:35 4 **Q** Are the origins of the epidemic multiple?

04:07:40 5 **A** Yes.

04:07:41 6 **Q** Are there many causes?

04:07:44 7 **A** Yes.

04:07:44 8 **Q** In fact, you didn't just say many causes. You said
04:07:49 9 something else, on page 97.

04:07:58 10 Was this you speaking, that where I've highlighted?

04:08:01 11 **A** I think it was.

04:08:02 12 **Q** "There are many, many, many causes that have
04:08:07 13 contributed to the overprescribing."

04:08:10 14 Do you stand by that testimony?

04:08:12 15 **A** Yes, I do.

04:08:15 16 **Q** If I were to ask you, sir, which card makes it a
04:08:27 17 straight flush, what would you tell me?

04:08:28 18 **A** Well, I just have to look for a second, but -- I don't
04:08:32 19 play a lot of cards, but I think this is not that complex a
04:08:35 20 question. And I would say it's the combination of the
04:08:37 21 cards.

04:08:37 22 **Q** Takes all of them?

04:08:39 23 **A** Correct.

04:08:40 24 **Q** If I were to ask you, give you a cake recipe and ask
04:08:46 25 you which ingredient makes it a cake, what would your answer

04:08:49 1 be?

04:08:49 2 **A** Well, I'd say it's the combination of them. It's not
04:08:53 3 a single ingredient.

04:08:54 4 **Q** If I were to ask you to play Connect the Dots, can you
04:09:02 5 kind of guess what this might be just sort of looking?

04:09:04 6 **A** Looks like a horse.

04:09:06 7 **Q** Uh-huh. But if you don't connect all of the dots, you
04:09:10 8 don't realize it's a horse with stripes.

04:09:13 9 What does a horse with stripes all of a sudden become?

04:09:16 10 **A** A zebra.

04:09:18 11 **Q** Is it important when analyzing the problems that have
04:09:24 12 the many, many, many causes of the epidemic, to quote you,
04:09:29 13 to examine all of them to get a full picture?

04:09:32 14 **A** Well, it depends on what I'm -- what one is being
04:09:35 15 asked to do. But if the question at hand is what are the
04:09:40 16 many, many causes, then one needs to examine the many, many
04:09:45 17 causes. So it really depends upon the question at hand.

04:09:48 18 **Q** And that's a great point.

04:09:51 19 What's your favorite fruit?

04:09:52 20 **A** I like bananas a lot.

04:09:55 21 **Q** Okay. So you don't like bread?

04:09:56 22 **A** I'm sorry?

04:09:57 23 **Q** You don't like bread?

04:09:59 24 **A** I like bread also.

04:10:01 25 **Q** But why didn't you say bread?

04:10:04 1 **A** I thought you asked me what my favorite fruit was.

04:10:07 2 **Q** So the question makes a difference in what the answer

04:10:10 3 is?

04:10:11 4 **A** Yes.

04:10:12 5 **Q** So when you're asked questions to testify about this,

04:10:15 6 that, or the other, is it fair to take your answer there and

04:10:20 7 start talking about all the things you didn't say?

04:10:24 8 **A** Well, I mean, I think it has -- the -- whatever I said

04:10:28 9 should be taken into context essentially.

04:10:32 10 **Q** I agree.

04:10:33 11 So, for example, you got asked questions by

04:10:38 12 Ms. Sullivan about do you have any evidence that Giant Eagle

04:10:41 13 ever did anything wrong.

04:10:42 14 Remember?

04:10:42 15 **A** Yes.

04:10:44 16 **Q** Did you look at Giant Eagle's distribution policies?

04:10:49 17 **A** No, I did not.

04:10:49 18 **Q** Did you look at Giant Eagle's pharmacy training?

04:10:54 19 **A** No, I did not.

04:10:55 20 **Q** Did you look at Giant Eagle's dispensing policies?

04:11:00 21 **A** I did not.

04:11:01 22 **Q** Did you decide if Giant Eagle is one of the many,

04:11:05 23 many, many causes?

04:11:08 24 **A** I wasn't asked to evaluate that.

04:11:13 25 **Q** And if you had been asked, could you have been looked

04:11:16 1 at these things and made a determination?

04:11:19 2 **A** Yes.

04:11:23 3 **Q** Is it fair to assume that you don't believe Giant
04:11:25 4 Eagle has any responsibility when you've never done your
04:11:28 5 homework to check?

04:11:29 6 **A** No.

04:11:30 7 **Q** Do you know what job Adam Zakin, the senior director
04:11:37 8 of pharmacy administration, at Giant Eagle had before they
04:11:40 9 hired him?

04:11:42 10 **A** No, I do not.

04:11:42 11 **Q** Would you want to do that kind of homework before you
04:11:45 12 came in and gave an opinion on causation?

04:11:50 13 **A** Well, if I -- yes, if I was asked to evaluate the role
04:11:55 14 of Giant Eagle in the opioid epidemic in these communities,
04:11:58 15 I would want to evaluate a lot of materials about their
04:12:03 16 policies and procedures and about the steps that they took
04:12:07 17 to -- you know, to flag suspicious prescribing and, once it
04:12:17 18 was flagged, the steps they took to understand why those
04:12:20 19 flags were raised and how they resolved those flags and
04:12:23 20 documented it.

04:12:24 21 **Q** Okay. And I've been referred to repeatedly in this
04:12:27 22 case the last few days as the plaintiffs' lawyer, and you've
04:12:31 23 been asked about working for plaintiffs' lawyers.

04:12:33 24 Remember that?

04:12:34 25 **A** Yes.

04:12:34 1 **Q** And a plaintiff is someone who's suing in a courtroom
04:12:39 2 civilly, right?

04:12:40 3 **A** Yes.

04:12:41 4 **Q** And I as a lawyer do represent people sometimes who
04:12:46 5 sue, and sometimes I represent people who get sued. I'm a
04:12:50 6 defense lawyer. I try cases.

04:12:51 7 You understand that?

04:12:53 8 MS. SULLIVAN: Objection, Your Honor.

04:12:55 9 **Q** Does that change?

04:12:56 10 MS. SULLIVAN: Objection to the lawyer
04:12:57 11 colloquy, Your Honor.

04:12:58 12 THE COURT: I'll sustain the objection the way
04:12:59 13 it was asked.

04:13:00 14 **Q** Does it change your opinion one way or the other what
04:13:04 15 I do for a living?

04:13:06 16 **A** My opinion about what?

04:13:08 17 **Q** About anything you've testified on.

04:13:11 18 **A** I mean, I'm -- I don't know if this answers your
04:13:14 19 question, but I view my role as serving first and foremost
04:13:17 20 the people of these communities and, secondly, the courts.

04:13:21 21 So I don't know if that answers your question, but,
04:13:27 22 you know, who you work for, you and others have asked for me
04:13:35 23 to do my best science, and that's what I've tried to do.

04:13:38 24 **Q** Okay. And the fact that I represent the citizens of
04:13:42 25 Lake and Trumbull County, does that matter at all to you?

04:13:47 1 MR. SWANSON: Objection, Your Honor.

04:13:49 2 **A** I mean, I don't -- again --

04:13:49 3 THE COURT: Overruled. Overruled.

04:13:53 4 **A** I don't quite know how to answer that, but the bottom
04:13:55 5 line is that my opinions and the stuff that I've said is --
04:14:03 6 you know, it's what I believe to be the case based on my
04:14:06 7 professional judgment.

04:14:07 8 **Q** Then you were directed to an article that you
04:14:10 9 published. It was Exhibit 1037, "The Prescription Opioid
04:14:18 10 and Heroin Crisis: A Public Health Approach to an Epidemic
04:14:23 11 of Addiction."

04:14:24 12 Do you remember that?

04:14:25 13 **A** Yes, I do.

04:14:25 14 **Q** And in that you were asked, do you ever put the blame
04:14:29 15 on the pharmacies.

04:14:30 16 Do you remember those questions?

04:14:31 17 **A** Yes.

04:14:31 18 **Q** And aside from just those individual questions, I'd
04:14:33 19 like you to look, please, at page 567 of your article. I'll
04:14:38 20 put it up here.

04:14:41 21 "Opioid-addicted individuals may receive OPR."

04:14:49 22 What does that stand for?

04:14:51 23 **A** Opioid pain relievers.

04:14:54 24 **Q** "Prescriptions from multiple providers, a practice
04:14:58 25 referred to as doctor shopping. Doctor shoppers can be

04:15:02 1 identified through use of state prescription drug monitoring
04:15:11 2 programs."

04:15:12 3 Do you see that?

04:15:12 4 **A** Yes, I do.

04:15:13 5 **Q** Do you know about the Ohio requirement, now, that
04:15:24 6 pharmacies check the prescription drug monitoring program,
04:15:31 7 it's called OARRS in Ohio?

04:15:35 8 **A** I'm familiar with OARRS. I'm not familiar with the
04:15:37 9 details of when pharmacists are required to check, but I'm
04:15:41 10 certainly aware of a trend towards requiring both
04:15:44 11 prescribers and pharmacists from checking these monitoring
04:15:47 12 programs.

04:15:48 13 **Q** And you write in here about prescribers being able to
04:15:51 14 consult their state PDMPs before prescribing.

04:15:57 15 Do you see that?

04:15:57 16 **A** Yes.

04:15:58 17 **Q** Is it equally important in your mind that the
04:16:01 18 pharmacies dispensing check these PDMPs and act responsibly
04:16:06 19 upon them?

04:16:06 20 **A** Yes, I think pharmacies and pharmacists have a role as
04:16:11 21 well in that regard.

04:16:11 22 **Q** Next, you were asked about your report and the causes
04:16:18 23 that you listed in your report.

04:16:19 24 Do you recall that?

04:16:21 25 **A** Yes.

04:16:21 1 **Q** You attached Appendix F to your report, didn't you?

04:16:26 2 **A** Yes, I did.

04:16:27 3 **Q** This is part of the abate man plan.

04:16:30 4 And you entitled it, "Potential indicators of
04:16:35 5 high-risk opioid distribution."

04:16:36 6 Do you see that?

04:16:37 7 **A** Yes, I do.

04:16:38 8 **Q** And the very first paragraph of this appendix to your
04:16:43 9 report, you wrote the following: "As described in this
04:16:52 10 appendix, these types of indicators" -- and you list them
04:16:55 11 below -- "these types of indicators rely on an extensive
04:17:00 12 evidence base that links them with an increased risk of
04:17:04 13 opioid-related adverse events, including addiction,
04:17:08 14 overdose, and death."

04:17:11 15 Do you see that?

04:17:11 16 **A** Yes.

04:17:11 17 **Q** And so these types of indicators that you list below,
04:17:20 18 do you believe that there's an extensive evidence base that
04:17:24 19 links them with these adverse events of addiction, overdose,
04:17:28 20 and death?

04:17:29 21 **A** Yes, I do.

04:17:29 22 **Q** Then let's look at one that's in paragraph 10. "Role
04:17:37 23 of pharmacies and pharmacists in addressing the opioid
04:17:40 24 epidemic."

04:17:41 25 Do you see this?

04:17:42 1 **A** Yes.

04:17:42 2 **Q** You wrote, "Pharmacies and pharmacists play an
04:17:47 3 important role in addressing the opioid epidemic given their
04:17:51 4 position within the pharmaceutical supply chain and
04:17:54 5 face-to-face interactions with patients."

04:17:59 6 Do you believe that to be true?

04:18:01 7 **A** Yes, I do.

04:18:01 8 **Q** "First and foremost, pharmacies and pharmacists should
04:18:07 9 follow up on indicators of opioid misuse, since they have
04:18:12 10 the authority to refuse prescription fills or to gather
04:18:16 11 further information so as to allow for the dispensing of
04:18:20 12 controlled substances under the safest conditions possible."

04:18:26 13 Do you believe that?

04:18:27 14 **A** Yes, I do.

04:18:28 15 **Q** And if we had asked you to go further and to research
04:18:38 16 the policies of Walgreens, of Giant Eagle, of Walmart/Sam's,
04:18:44 17 and of CVS, could you have done it?

04:18:46 18 **A** Yes, I could have done so.

04:18:54 19 **Q** You testified in front of Congress, both the Senate
04:18:58 20 and the House, correct?

04:18:59 21 **A** Yes.

04:19:00 22 **Q** And in both of those reports you were asked, did you
04:19:04 23 testify about pharmacies. Remember?

04:19:06 24 **A** Yes.

04:19:06 25 **Q** And you indicated to Ms. Sullivan that what you did is

04:19:10 1 you attached a report, correct?

04:19:16 2 **A** Yes.

04:19:17 3 **Q** And I think I saw that you attached it to both your
04:19:20 4 House and your Senate testimony.

04:19:22 5 **A** Yeah, I was aware -- I certainly attached it to the
04:19:27 6 House, but it may be that I attached it to the Senate
04:19:29 7 testimony as well.

04:19:30 8 **Q** Now, I don't suspect many of us have ever testified
04:19:37 9 before Congress. Is it true that you have a time limit of
04:19:46 10 how long you're allowed to testify?

04:19:49 11 **A** Yes, it is.

04:19:50 12 **Q** I mean, do they bring you in and just give you the
04:19:55 13 floor to go on for hours and to give all your opinions?

04:19:59 14 **A** I think I had maybe three minutes or possibly five.

04:20:04 15 **Q** And so to say, but, look, in those three minutes or
04:20:08 16 possibly five, you didn't solo out pharmacies, is that what
04:20:15 17 you were there to do?

04:20:17 18 **A** No, it is not.

04:20:18 19 **Q** You did attach a report that's a lot longer than three
04:20:21 20 to five minutes of reading material, fair?

04:20:23 21 **A** Yes.

04:20:23 22 **Q** And so we can look at this report and we can see, for
04:20:27 23 example, on page 23 where you put in your report "Pharmacies
04:20:37 24 are also an important stakeholder in the healthcare supply
04:20:40 25 chain and distribution system for prescription opioids."

04:20:44 1 True?

04:20:45 2 **A** Yes, true.

04:20:45 3 **Q** That "State and federal law govern some elements of
04:20:54 4 their conduct with respect to reducing nonmedical opioid use
04:20:57 5 and diversion," true?

04:21:00 6 **A** Yes, that's true.

04:21:01 7 **Q** And this isn't the part that was read to you by
04:21:03 8 Ms. Sullivan when she was talking about PBMs, but this is in
04:21:07 9 your report you submitted, isn't it?

04:21:09 10 **A** Yes, it is.

04:21:15 11 **Q** You put in your report the need to educate prescribers
04:21:19 12 and pharmacists about how to prevent, identify, and treat
04:21:23 13 opioid addiction.

04:21:24 14 Do you believe that to be true?

04:21:26 15 **A** Yes, I do.

04:21:27 16 **Q** Did you put that in your report for your written
04:21:30 17 testimony to Congress?

04:21:32 18 **A** I do not believe that I did.

04:21:34 19 **Q** Well, I mean, you gave them this report that I read it
04:21:37 20 from.

04:21:37 21 **A** Well, that's true. So it was part of my testimony --
04:21:40 22 it was part of the testimony that I provided, yes.

04:21:43 23 **Q** Okay. And by the same token, the Senate hearings that
04:21:53 24 you testified about, if we go to those, it was plaintiff --
04:21:55 25 I mean Giant Eagle's Exhibit 1328. At the end of your

04:22:01 1 three, maybe five minutes, you've got "The prescription
04:22:09 2 opioid and heroin crisis: A public health approach to an
04:22:13 3 epidemic of addiction appears in the Appendix."

04:22:17 4 Do you see that?

04:22:18 5 **A** I do.

04:22:31 6 **Q** Next stop: Your report.

04:22:37 7 You were asked extensively about the role of doctors,
04:22:41 8 right?

04:22:42 9 **A** Yes.

04:22:42 10 **Q** By the way, let's go back to causes for one moment.

04:22:47 11 Many, many, many causes, right?

04:22:53 12 **A** Yes.

04:22:54 13 **Q** Manufacturers?

04:22:55 14 **A** Yes.

04:22:56 15 **Q** Distributors?

04:22:57 16 **A** Yes.

04:22:58 17 **Q** Doctors?

04:23:00 18 **A** Yes.

04:23:01 19 **Q** Drug cartels?

04:23:04 20 **A** Yes.

04:23:04 21 **Q** FDA?

04:23:06 22 **A** Yes.

04:23:07 23 **Q** DEA?

04:23:09 24 **A** Yes.

04:23:11 25 **Q** Sloppiness by people with medicines?

04:23:15 1 **A** Well, do you mean patients not paying attention to
04:23:18 2 what they're given or what do you mean by sloppiness?
04:23:22 3 **Q** People who keep opioids available for high school kids
04:23:25 4 to take to a party.
04:23:27 5 **A** Yes.
04:23:31 6 **Q** Pharmacists?
04:23:31 7 MS. SULLIVAN: Objection. No foundation.
04:23:33 8 Beyond the scope.
04:23:33 9 THE COURT: Overruled. Overruled.
04:23:35 10 **A** Yes.
04:23:35 11 **Q** Pharmacies that set policies and give the pharmacists
04:23:38 12 tools?
04:23:38 13 **A** Yes.
04:23:38 14 **Q** All right. Last stop then, your report.
04:23:47 15 You testified that most doctors aren't prescribing for
04:23:51 16 ill intent, right?
04:23:52 17 **A** Yes.
04:23:53 18 **Q** The statistic that Joe Rannazzisi, the DEA man, gave
04:23:57 19 was that 99 percent of the doctors seem to be legit in his
04:24:02 20 mind.
04:24:03 21 **A** Okay.
04:24:03 22 **Q** Do you fuss with that?
04:24:04 23 **A** Well, I don't know the data -- I'm not sure if that
04:24:11 24 is -- I'm not sure the source of that estimate, but I think
04:24:13 25 that that's not an unreasonable suggestion, that one out of

04:24:19 1 a hundred doctors is sort of up to no good, sort of plus or
04:24:23 2 minus.

04:24:23 3 **Q** So that means if we've got 30,000 doctors in Ohio,
04:24:27 4 you're looking at about 300 rogue doctors?

04:24:30 5 **A** Yeah, but -- and these are -- to be fair, these are
04:24:34 6 doctors that are way -- I mean, these are the ones like 300
04:24:38 7 scripts, you know, no documentation, cash pay only,
04:24:40 8 et cetera.

04:24:41 9 **Q** Okay. And then you were asked in your report about
04:24:49 10 opinion 3 and putting the word "dispensed" in.

04:24:58 11 Do you see that?

04:24:59 12 **A** Yes.

04:24:59 13 **Q** As opposed to "prescribed."

04:25:03 14 Do you stand by this opinion and to the jury?

04:25:05 15 **A** Yes, I do.

04:25:06 16 **Q** Well, let me ask you this: Do you believe the volume
04:25:10 17 of opioids prescribed increased 400 percent?

04:25:14 18 **A** Yes, I do.

04:25:14 19 **Q** Do you believe the volume of opioids dispensed
04:25:17 20 increased 400 percent?

04:25:18 21 **A** Yes, I do.

04:25:19 22 **Q** Would you please explain why that's not a
04:25:21 23 contribution?

04:25:22 24 **A** Because the medicines that are -- I mean, I suppose
04:25:31 25 there could be a modest difference between these two

04:25:36 1 numbers, but essentially medicines that are prescribed are
04:25:41 2 typically dispensed. And frankly, if there was a large -- I
04:25:47 3 mean, there are a lot of medicines that are -- there are
04:25:52 4 people that don't pick up medicines, so there are -- there
04:25:55 5 may be some differences if you look at sort of the number of
04:25:57 6 actual prescriptions written, some prescriptions aren't
04:26:03 7 filled. So it may be that there are some medicines that are
04:26:06 8 prescribed but not actually filled.

04:26:08 9 But if you look at a population level, these data are
04:26:14 10 not -- the data that are -- that the CDC presents that show
04:26:17 11 these large increases, this is from prescriptions filled.
04:26:24 12 So these are all prescriptions that were dispensed, and they
04:26:27 13 had to be written before they were dispensed essentially.

04:26:29 14 **Q** All right. We've got some juror questions that I can
04:26:31 15 read. I'd like to show them to you and have you answer
04:26:34 16 them, please. I'll put them on the screen.

04:26:36 17 "Congressional testimony-is healthcare also to blame?
04:26:42 18 And are pharmacies considered a step of healthcare?"

04:26:45 19 **A** Well, I think it's a great question. And the
04:26:47 20 healthcare system has certainly contributed to the opioid
04:26:51 21 epidemic, so the healthcare system includes many of the
04:26:54 22 parties that we've discussed, doctors, other licensed
04:26:58 23 prescribers, patients, hospitals, you know, institutions,
04:27:05 24 long term care facilities. And pharmacists and pharmacies
04:27:09 25 are part of the healthcare system.

04:27:10 1 You know, the healthcare system has -- there are many
04:27:15 2 different types of healthcare providers. Pharmacists are a
04:27:19 3 type of healthcare provider. And pharmacies are part of the
04:27:22 4 healthcare system, yes.

04:27:24 5 **Q** Okay. Thank you.

04:27:25 6 Next question.

04:27:30 7 "How does one properly dispose of unused prescription
04:27:36 8 pills, specifically controlled substances?"

04:27:38 9 **A** Well, it's another outstanding question. The common
04:27:44 10 sort of wisdom is to flush them down the toilet, and that's
04:27:47 11 not actually recommended or advised in most cases, although
04:27:52 12 as recently as a few years ago I believe for opioids, the
04:27:57 13 FDA suggested if you can't do any other -- if you don't have
04:28:00 14 another means of disposing them, that they should be
04:28:03 15 flushed. But flushing them puts them into the groundwater
04:28:07 16 and the water system and the like.

04:28:08 17 So the preferred way to dispose them is either through
04:28:13 18 putting them in a disposal packet, which is a specific type
04:28:17 19 of packet that has chemicals that inactivate the drug. Or
04:28:22 20 to bring them back to a pharmacy or to a hospital or health
04:28:27 21 system or some police departments now have drop-off boxes.

04:28:31 22 And so those medicines are then managed in batches of
04:28:35 23 thousands and tens of thousands of prescriptions, and they
04:28:40 24 are safely -- I believe they're ultimately incinerated,
04:28:42 25 they're burned.

04:28:44 1 But it's a really big problem, and unfortunately there
04:28:49 2 are -- as I've written, there are opioids in bedrooms and,
04:28:54 3 you know, bedroom nightstands and bathroom cabinets all over
04:28:57 4 the country, including in these two counties.

04:28:59 5 **Q** I want to see if this relates in your mind to a
04:29:02 6 question you -- set of questions you were asked by
04:29:07 7 Ms. Sullivan about nonmedical acquisition, how people can
04:29:10 8 get them from neighbors or find them around the house or
04:29:15 9 something like that.

04:29:15 10 Remember those questions?

04:29:16 11 **A** Yes, I do.

04:29:17 12 **Q** Is this part of how oversupply, just oversupply fuels
04:29:24 13 the epidemic?

04:29:25 14 **A** Yes, it is.

04:29:26 15 **Q** How?

04:29:26 16 **A** Because the opioids that end up being unused and that
04:29:32 17 are dispensed, prescribed and dispensed in large amounts,
04:29:36 18 and end up being unused in many cases end up being diverted.
04:29:42 19 They end up being given or sold or stolen or passed among
04:29:47 20 friends. And so you end up with stunning statistics.

04:29:53 21 Several years ago there was a statistic that high
04:29:55 22 school students reported prescription drugs were second only
04:29:59 23 to marijuana in terms of ease of access. And so it's a
04:30:02 24 really important problem that the overprescribing and
04:30:07 25 overdispensing of these pills ends up putting a pool or a

04:30:11 1 reservoir of prescription drugs in the community or opioids
04:30:15 2 in the community that contribute to harm.

04:30:22 3 **Q** Next set of questions.

04:30:24 4 "You said from 1992 to 2010 the amount of opioids
04:30:28 5 dispensed increased 400 percent and then leveled off. How
04:30:32 6 much has dispensing decreased since 2010?"

04:30:36 7 **A** Great question. And it has decreased considerably.

04:30:41 8 So I believe nationally perhaps by as much as 30 to 35 or
04:30:46 9 maybe even 40 percent. But that's from the peak. So you're
04:30:52 10 going up like this, up, up, up, up, up, and then in 2010,
04:30:57 11 2011, it sort of plateaus, and now opioids have come down.
04:31:00 12 But we're way above the historic baselines. We're still --
04:31:06 13 they're still being prescribed in quantities much, much
04:31:08 14 higher than they were before the epidemic began.

04:31:13 15 **Q** "Does that number have a relationship with the DEA's
04:31:16 16 limits set on opioid manufacturing and importing?"

04:31:21 17 **A** Well, it does, but we're back to the fact that there
04:31:24 18 are many factors that contribute to the ultimate volume of
04:31:27 19 opioids being put on the market. And so the DEA quotas make
04:31:32 20 a difference, the behavior of doctors and patients makes a
04:31:35 21 difference, the behavior of pharmacists and pharmacies makes
04:31:39 22 a difference, and so on.

04:31:41 23 **Q** Okay. "Does that number have a relationship to pain
04:31:46 24 clinics?"

04:31:47 25 **A** Well, pain clinics are -- pain clinics are part of

04:31:51 1 what I would -- well, so there are legitimate -- I should be
04:31:54 2 careful about the use of the word "legitimate."

04:31:57 3 There are pain clinics that are practicing well within
04:31:59 4 the boundaries of normal medicine, and then there are some
04:32:03 5 pain clinics that are sort of where there are sort of rogue
04:32:07 6 prescribers. And so I don't really know which one this
04:32:09 7 refers to, but the bottom line is that the reductions in
04:32:12 8 opioids that we've seen since 2010 are a result of many
04:32:18 9 factors, and some of them are tighter regulation of these
04:32:22 10 sorts of pain clinics and greater law enforcement activities
04:32:27 11 and greater use of prescription monitoring programs and use
04:32:32 12 of patient and provider education such as are taking place
04:32:36 13 in Lake and Trumbull Counties.

04:32:43 14 **Q** And then, Doctor, you said in your report when you
04:32:47 15 were talking about the role of pharmacies and pharmacists in
04:32:49 16 addressing the opioid epidemic, you said, "pharmacists
04:32:54 17 report that time constraints that result from organizational
04:32:57 18 policies, such as those that arise from insufficient
04:33:00 19 staffing or time requirements for filling a prescription,
04:33:05 20 hinder their review of concerning patient behavior or
04:33:09 21 prescribing practices."

04:33:11 22 As we come to the end of the road, can you explain
04:33:15 23 what you meant by that?

04:33:17 24 **A** Well, what I meant is that the sorts of steps that are
04:33:21 25 required in order to identify and respond to flags that are

04:33:25 1 triggered take time, and they take resources. You need
04:33:29 2 people, and the people have to be trained and they have to
04:33:32 3 be supported and they have to have the time and authority
04:33:37 4 and supervision to respond appropriately and manage or --
04:33:44 5 manage these flags as they arise and document them
04:33:48 6 accordingly.

04:33:48 7 And so what I was pointing to was that there are
04:33:51 8 constraints that historically have made that difficult for
04:33:55 9 pharmacists to do.

04:33:58 10 MR. LANIER: All right. Thank you very much,
04:33:59 11 Doctor.

04:33:59 12 Your Honor, I will return the questions to Mr. Pitts.
04:34:02 13 Thank you.

04:34:03 14 THE WITNESS: Thank you.

04:34:05 15 THE COURT: All right. Thank you, Mr. Lanier.

04:34:06 16 Ms. Sullivan.

04:34:07 17 MS. SULLIVAN: Briefly, Your Honor.

04:34:16 18 - - - - -

04:34:18 19 RECROSS-EXAMINATION

04:34:18 20 BY MS. SULLIVAN:

04:34:18 21 Q Dr. Alexander, I'm not going to ask you about food or
04:34:20 22 elephants or zebras or bananas, but I am going to ask you
04:34:24 23 about some of the things you talked with Mr. Lanier about.

04:34:28 24 You had testified previously that you never in your
04:34:31 25 Congressional testimony said anything about pharmacies as

04:34:36 1 contributing to the opioid crisis, or in your other papers.
04:34:40 2 And Mr. Lanier showed you Plaintiffs' Exhibit -- I'm sorry,
04:34:44 3 Defense Exhibit HBC Exhibit 1037. And he pointed you to the
04:34:48 4 part of your paper that talked about doctor shopping and
04:34:54 5 state PDMP programs, right?

04:34:58 6 **A** Yes, I believe so.

04:34:58 7 **Q** Yeah. And that paragraph that you wrote related to
04:35:04 8 prescribers looking at prescription data monitoring
04:35:08 9 programs, correct? Talks about prescriber's ability to
04:35:14 10 detect opioid addiction by using the PDMP, right?

04:35:17 11 **A** Yes.

04:35:18 12 **Q** It had nothing to do with pharmacies?

04:35:20 13 **A** Well, I think the questioning was about whether
04:35:25 14 pharmacies also have access to that type of data. But what
04:35:27 15 I wrote here was about prescribers, yes.

04:35:30 16 **Q** Yeah, yeah. So -- and the truth, Doctor, none of your
04:35:35 17 papers -- and to back up, Doctor, you have done -- I mean,
04:35:37 18 Mr. Lanier said you didn't do your homework.

04:35:39 19 You have done extensive analysis about the opioid
04:35:42 20 crisis and the causes of the opioid crisis. One of the
04:35:46 21 reasons that Congress asked you to testify. And the truth
04:35:48 22 is in none of your papers, in this extensive analysis, did
04:35:52 23 you ever say that pharmacies were even a little bit
04:35:55 24 responsible for the opioid crisis?

04:35:56 25 MR. LANIER: Objection, Your Honor. I never

04:35:57 1 said he didn't do his homework.

04:36:02 2 THE COURT: Rephrase the question, please.

04:36:03 3 MS. SULLIVAN: Sure.

04:36:04 4 **Q** Dr. Alexander, you have done extensive analysis of the
04:36:07 5 opioid crisis, its causes, potential remedies, and so on.
04:36:13 6 You're an expert?

04:36:16 7 **A** Well, I mean, my -- what I've prepared for this group
04:36:22 8 is based on what I was asked to do. And had I been asked to
04:36:26 9 look carefully at the role of Giant Eagle or other parties
04:36:32 10 in this matter, there's a process that I would have used,
04:36:36 11 and I would have done my best to do so.

04:36:38 12 **Q** Not my question, Doctor.

04:36:40 13 Unrelated to this litigation, you have looked at an
04:36:43 14 extensive amount of information and data and published
04:36:45 15 papers on the opioid crisis, testified before Congress on
04:36:49 16 the opioid crisis, talked about causes of the opioid crisis.

04:36:53 17 And the truth is never once in your papers or in your
04:36:56 18 Congressional testimony have you said that pharmacies were
04:36:59 19 responsible in any way for the opioid crisis?

04:37:02 20 **A** Well, we -- I think we discussed this earlier. I'm
04:37:05 21 not sure if that's true. I think that we just reviewed some
04:37:08 22 settings in which, for example, in the report from evidence
04:37:12 23 to impact, I do discuss the role of pharmacies in addressing
04:37:16 24 the opioid epidemic. And I wouldn't be discussing their
04:37:20 25 role in addressing them were they not one of many important

04:37:24 1 parties in this.

04:37:25 2 Q Well, let's look at that.

04:37:26 3 Doctor, that paper says nothing about pharmacies being
04:37:31 4 a cause or even a contributor to the opioid crisis, fair?

04:37:36 5 A I guess I would prefer to see if there's a particular
04:37:39 6 thing that you'd like for me to respond to.

04:37:41 7 Q Well, let's look at what Mr. Lanier showed you, if I
04:37:46 8 could find it here.

04:37:47 9 MR. LANIER: I used page 23, if that helps.

04:37:51 10 MS. SULLIVAN: Thank you.

04:37:56 11 Q Yes. On page 23, Doctor, you say, "Pharmacies are an
04:38:00 12 important stakeholder," et cetera, et cetera, et cetera.

04:38:03 13 Nowhere here do you say that pharmacies were a cause
04:38:06 14 of the opioid crisis?

04:38:07 15 A I'm sorry, what tab is this?

04:38:08 16 Q This is page 21 of Tab A, sir.

04:38:12 17 A A, as in apple?

04:38:14 18 Q Yes, sir.

04:38:16 19 MR. LANIER: Page 23, not 21.

04:38:19 20 Q Page 23, sir.

04:38:24 21 THE COURT: You're on page 23, Ms. Sullivan?

04:38:28 22 MS. SULLIVAN: Yes, I am.

04:38:28 23 Q In the second paragraph that Mr. Lanier showed you,
04:38:31 24 Dr. Alexander, the truth is that nowhere in that paragraph
04:38:34 25 does it say that pharmacies contributed or caused the opioid

04:38:36 1 crisis?

04:38:37 2 **A** I think that's correct.

04:38:41 3 **Q** So the two papers Mr. Lanier showed you say nothing
04:38:43 4 about pharmacies causing the opioid crisis, fair?

04:38:49 5 **A** I believe that's correct. I wasn't focused there in
04:38:53 6 enumerating all of the causes of the epidemic.

04:38:57 7 **Q** And I think Mr. Lanier suggested that you didn't tell
04:39:01 8 Congress that pharmacies were a cause because you only had
04:39:03 9 three minutes, you didn't have enough time.

04:39:06 10 Do you remember that?

04:39:07 11 **A** Well, that's his -- I mean, I -- I'm not comfortable
04:39:11 12 representing what he -- I mean, what I took his
04:39:17 13 questioning -- I took his questioning to point out that I
04:39:18 14 didn't have, you know, all the time in the world in front of
04:39:24 15 Congress, and that was true.

04:39:25 16 **Q** But you submitted an appendix, right, and there were
04:39:28 17 written statements, correct?

04:39:28 18 **A** Yes, an appendix in which I highlight the potential
04:39:31 19 role of many different parties, including pharmacies.

04:39:34 20 **Q** Yeah. And what Mr. Lanier didn't show you what you
04:39:37 21 said in the appendix because the truth is it doesn't say
04:39:39 22 that pharmacies contributed even a little bit to the opioid
04:39:42 23 crisis, does it, sir?

04:39:45 24 **A** Well, we did review -- we did review the appendix
04:39:48 25 together just a minute ago. The appendix was the Johns

04:39:51 1 Hopkins report from evidence to impact.

04:39:52 2 Q The one that didn't say anything about pharmacies

04:39:56 3 contributing to the opioid crisis, right?

04:40:01 4 A Yes.

04:40:06 5 Q And you did tell Congress, as we looked at it on page

04:40:10 6 88 of Defense Exhibit 1329, things you thought did cause the

04:40:15 7 opioid crisis, and we looked at it, right, FDA -- I'm sorry,

04:40:18 8 Doctor, page 88.

04:40:20 9 A Of what tab?

04:40:23 10 Q This is tab -- that is a good question.

04:40:34 11 Tab 5, Doctor.

04:40:44 12 A Okay. Page 88, Tab 5. I'm with you.

04:40:48 13 Q Yes, sir. And you did talk about causes of the opioid

04:40:51 14 crisis, and you talked about manufacturers, FDA, and DEA,

04:40:54 15 right?

04:40:55 16 MR. WEINBERGER: Objection, Your Honor. If

04:40:56 17 she's going to -- she has to be complete.

04:41:00 18 Q Tell me where I'm wrong, Dr. Alexander. Those are

04:41:02 19 things you talked about as a cause of the opioid crisis.

04:41:04 20 THE COURT: Hold it, hold it, hold it, hold

04:41:06 21 it.

04:41:13 22 If you're asking Dr. Alexander about a specific

04:41:15 23 statement he made on page 88, Ms. Sullivan, read the

04:41:19 24 statement and ask him if this is what he said or what did he

04:41:21 25 mean and have a question.

04:41:22 1 MS. SULLIVAN: Sure.

04:41:23 2 BY MS. SULLIVAN:

04:41:24 3 Q And Dr. Alexander, we've gone through this. You talk
04:41:26 4 about the --

04:41:26 5 (Court reporter interjection.)

04:41:38 6 Q On page 88, Dr. Alexander, are you with me?

04:41:39 7 A Yes, I am.

04:41:40 8 Q Okay. And Dr. Alexander, here you talk about "The
04:41:42 9 origins of the epidemic are multiple but arise from within
04:41:46 10 the healthcare system, including unsubstantiated claims
04:41:49 11 about the safety and effectiveness of opioids, multifaceted
04:41:53 12 campaigns by pharmaceutical companies, and failures by the
04:41:56 13 FDA and DEA to regulate the products appropriately," right?

04:42:00 14 A Yes. And this is the same testimony where in response
04:42:02 15 to a question about the causes, I say there are many, many,
04:42:05 16 many, I believe.

04:42:07 17 Q Right. You say many, many, many. You single out some
04:42:11 18 major ones. Never once in your Congressional testimony or
04:42:13 19 any of your papers, despite your extensive analysis of this
04:42:17 20 issue, did you ever say that pharmacies were a cause, even a
04:42:23 21 little cause of the opioid crisis?

04:42:24 22 A I'm not sure that that's true, but I've already spoken
04:42:27 23 to that. And the reason I'm not sure if it's true is
04:42:30 24 because I'm not -- I don't recall and I'm not able to
04:42:33 25 summarize a statement like that or verify it across 50 or

04:42:38 1 more papers that I've published on the opioid epidemic.

04:42:41 2 Q You can't cite the jury to a single statement you made
04:42:44 3 in any published paper or Congressional testimony where you
04:42:48 4 said that pharmacies were in any way responsible for the
04:42:50 5 opioid crisis?

04:42:52 6 A Again, I can't, as I sit here, provide a specific
04:42:57 7 reference to a specific paper. I have published some papers
04:43:03 8 about the use of automated methods such as can be used by
04:43:06 9 pharmacies to identify high risk dispensing, but I don't
04:43:12 10 know if in that process the degree to which I discussed the
04:43:16 11 role of pharmacies as a cause of the opioid epidemic.

04:43:21 12 Q Never cited in any paper that you can cite the jury to
04:43:23 13 where pharmacies were a cause of the opioid crisis?

04:43:27 14 A Well, that's not true. I think -- I mean, I have some
04:43:31 15 suggestions of where to potentially look, and these are
04:43:33 16 papers that are referenced in my report.

04:43:38 17 Q But you -- doctor, sitting here we can agree you
04:43:40 18 didn't tell Congress that pharmacies were a cause of the
04:43:43 19 opioid crisis, right?

04:43:46 20 A Yes, in that statement to this Congressional panel, I
04:43:50 21 pulled out three causes that I felt were important to
04:43:54 22 emphasize to them, and those three causes, none of those
04:43:57 23 three causes were pharmacies.

04:43:59 24 Q And we looked at your other Congressional testimony.
04:44:02 25 You didn't tell Congress that you thought pharmacies were a

04:44:05 1 cause of the opioid crisis?

04:44:06 2 **A** Well, I think in both cases I would be surprised if I
04:44:11 3 didn't underscore that the epidemic is complex and
04:44:14 4 multifaceted, and that is that there are many causes that
04:44:17 5 have contributed.

04:44:18 6 **Q** My question, Doctor, is pharmacies. You singled out
04:44:21 7 manufacturers, DEA, FDA, prescribers. Never singled out
04:44:25 8 pharmacies?

04:44:25 9 **A** I believe that may be the case in the testimony.

04:44:30 10 **Q** And Mr. Lanier didn't show you any papers where you
04:44:34 11 said pharmacies were a cause of the opioid crisis?

04:44:36 12 **A** Well, I've --

04:44:37 13 **Q** Sir, can you answer my question? He showed you papers
04:44:40 14 that language was not --

04:44:42 15 THE COURT: Hold it.

04:44:43 16 If you want to ask a question, let him look at the
04:44:45 17 document and then make his answer.

04:44:47 18 MS. SULLIVAN: Sure, Your Honor.

04:44:49 19 **A** Can you reask the question, please?

04:44:50 20 **Q** Sure. Mr. Lanier didn't show you -- he showed you two
04:44:55 21 papers, and neither one of them we looked at, this one
04:44:58 22 talked about doctors, your other one talked generally about
04:45:02 23 pharmacies.

04:45:02 24 Neither paper that Mr. Lanier showed you said that
04:45:05 25 pharmacies were in any way responsible for the opioid

04:45:07 1 crisis?

04:45:08 2 **A** Well, I don't -- he did not show me a paper, that's
04:45:15 3 true, and I have written in multiple places about the
04:45:19 4 opportunities that we have to improve the safe use of
04:45:23 5 opioids in communities by improving the quality of
04:45:26 6 dispensing. And that doesn't happen without pharmacies
04:45:30 7 playing a role, because if they didn't play a role, then I
04:45:34 8 wouldn't be recommending that we improve dispensing
04:45:36 9 processes in order to improve safe opioid use.

04:45:40 10 **Q** And the truth is, Doctor, on Giant Eagle and the other
04:45:42 11 defendants here, you haven't looked at their dispensing
04:45:45 12 policies or procedures in any way to address that issue
04:45:50 13 about what they did wrong, what they did right, way to
04:45:52 14 improve. So you have no idea, you didn't look at them?

04:45:55 15 **A** I would have been happy to had I been asked, but I was
04:45:57 16 not asked to for this case, although I did see portions of
04:46:02 17 Mr. Catizone's and Mr. McCann's reports.

04:46:05 18 **Q** And, Doctor, it's interesting that you have done a
04:46:07 19 lot -- fair to say you've done a lot of work in connection
04:46:10 20 with the opioid crisis. You've done a lot of review, you've
04:46:13 21 done a lot of analysis, and you've written some papers?

04:46:15 22 **A** Yes.

04:46:15 23 **Q** Do you know why they didn't ask you to address the
04:46:19 24 issue of causation as it relates to pharmacies?

04:46:24 25 MR. WEINBERGER: Objection, Your Honor.

04:46:30 1 MS. SULLIVAN: I'll withdraw it, Your Honor.
04:46:32 2 MR. WEINBERGER: She's withdrawing --
04:46:36 3 THE COURT: I still want to go on the
04:46:38 4 headphones.

04:46:40 5 (At side bar at 4:46 p.m.)

04:46:52 6 THE COURT: All right. Ms. Sullivan, I'd like
04:46:53 7 you to take a deep breath and slow down because that last
04:46:57 8 question was completely improper, all right? So let's
04:47:02 9 hopefully wrap up with this witness on something that's
04:47:05 10 appropriate.

04:47:05 11 MR. WEINBERGER: Your Honor, I think this -- I
04:47:10 12 think you have to admonish her.

04:47:12 13 THE COURT: I just did. No, I just said what
04:47:15 14 I'm going to say.

04:47:16 15 MS. SULLIVAN: Thank you, Your Honor.

04:47:18 16 (In open court at 4:47 p.m.)

04:47:35 17 BY MS. SULLIVAN:

04:47:35 18 Q Doctor, you were asked about time constraints for
04:47:37 19 pharmacies.

04:47:38 20 Are you aware that Giant Eagle has no time constraints
04:47:40 21 in terms of how long it takes to dispense a prescription?

04:47:45 22 A Well, I mean, I haven't reviewed Giant Eagle's
04:47:49 23 policies, but it's hard -- I mean, when you have six people
04:47:52 24 in line behind the person that you're trying to serve, I
04:47:56 25 don't quite understand what that policy would mean but -- or

04:48:00 1 the sort of -- the implementation of it. But I've not
04:48:03 2 reviewed Giant Eagle's policies in that regard.

04:48:06 3 **Q** And same for the other defendants here. You have no
04:48:09 4 idea what time constraints, if any, they put on
04:48:11 5 prescribing -- I mean dispensing prescriptions?

04:48:14 6 **A** Correct. That wasn't required for what I was asked to
04:48:17 7 do in this case.

04:48:17 8 **Q** And Mr. Lanier asked you about the indicators for
04:48:22 9 suspicious prescriptions in your Appendix F?

04:48:29 10 **A** Yeah, I mean, I don't know that I used the word
04:48:31 11 "suspicious," but he may have. But I view it as indicators
04:48:34 12 of potential high risk dispensing.

04:48:37 13 **Q** And this truth is you just got that are from
04:48:40 14 Dr. Catizone's expert report, right?

04:48:42 15 **A** No.

04:48:42 16 **Q** I reviewed the portion -- I'm looking at page 2 of
04:48:47 17 your appendix.

04:48:48 18 **A** Right.

04:48:48 19 **Q** "I reviewed the portion of Carmen Catizone's expert
04:48:53 20 report in which he identifies indicators that are triggered
04:48:55 21 based on information about prescriptions, patients,"
04:48:58 22 et cetera. And these indicators are listed in Table 1
04:49:01 23 below, right?

04:49:01 24 **A** Well, it's not -- I guess I responded quickly saying
04:49:04 25 no because it's not as if he just threw something over the

04:49:07 1 fence and I just started using it. I mean, I have my own
04:49:11 2 knowledge base of the evidence here and the science, and I
04:49:15 3 looked at the indicators that Mr. Catizone was using, and I
04:49:22 4 provide those in Table 1. It's not as if I just
04:49:28 5 reflexively, you know, just sort of -- he gave me, you know,
04:49:31 6 these ten things and said here and then I said, okay, you
04:49:34 7 know, no further thought or something.

04:49:36 8 **Q** But that's what you say, that you took them from
04:49:38 9 Mr. Catizone --

04:49:39 10 **A** Well, the ones in Table 1, but I discussed the science
04:49:42 11 and evidence base much more broadly in the paragraphs that
04:49:45 12 follow.

04:49:47 13 **Q** And let's look at your Table 1. And these are the
04:49:54 14 indicators of potential -- and, Doctor, you're not a
04:49:58 15 pharmacist, and you don't pretend to be an expert in
04:50:01 16 pharmacy practices and procedures, correct?

04:50:03 17 **A** Well, I'm a pharmacoepidemiologist, which depends
04:50:08 18 crucially on understanding pharmacy, because that's part of
04:50:11 19 the field of what I do as a pharmacoepidemiologist, but I'm
04:50:18 20 not licensed to dispense prescription medicines.

04:50:21 21 **Q** And so, for example, one of your indicators here is
04:50:25 22 distance traveled, right?

04:50:27 23 **A** Yes.

04:50:27 24 **Q** And you say it's an indicator of a potential issue
04:50:33 25 with a prescription if someone lives a significant distance

04:50:35 1 from a provider who issued the opioid prescription or a
04:50:40 2 pharmacy where it was filled, right?

04:50:42 3 **A** Yes, could be.

04:50:42 4 **Q** And then you have a footnote, right? And it says,
04:50:49 5 "This distance will depend on geographic and demographic
04:50:52 6 factors such as rural density of pharmacies in a patient's
04:50:58 7 home ZIP code which can be incorporated into algorithms that
04:51:01 8 identify flags," right?

04:51:03 9 **A** Yes.

04:51:03 10 **Q** You don't have a mild cutoff. You don't say if
04:51:06 11 they're more than 25 miles it's suspicious, right?

04:51:09 12 **A** Well, it's not -- I mean, these are methods that have
04:51:14 13 an evidence base to support them, and there's not an all or
04:51:18 14 none level here that is universally it. You know, they --
04:51:25 15 everything has to be taken or interpreted in context.

04:51:28 16 **Q** Fair enough. In other words, this is -- this is
04:51:30 17 something that it's based on a judgment of a pharmacist.

04:51:32 18 It's not a mild cutoff. You don't say if they're 25 miles
04:51:36 19 it's probably bad or if they're shorter it's probably good.
04:51:39 20 It's a matter of judgment?

04:51:41 21 **A** Everything pharmacists are doing requires judgment as
04:51:46 22 well as facts, yes.

04:51:47 23 **Q** And then, Doctor, the -- some of the other indicators
04:51:52 24 here, prescriber activity, using multiple prescribers,
04:51:57 25 multiple prescriptions from a single provider, number of

04:52:00 1 pharmacies, that's the kind of doctor shopping or rogue
04:52:05 2 prescribers we were talking about earlier, correct?

04:52:07 3 **A** Well, a lot of these flags have nothing to do with
04:52:10 4 opioid shoppers, to be clear. I mean, the majority of them
04:52:13 5 are not, although opioid shopping is one type of flag. But
04:52:16 6 there are many, many flags here that don't have anything to
04:52:18 7 do with opioid shopping.

04:52:21 8 **Q** Fair enough. But the -- to the extent you're applying
04:52:23 9 these to opioid shopping, we're talking about doctor
04:52:26 10 shopping here and rogue prescribers, right?

04:52:32 11 **A** No, not necessarily. I mean, they -- you may have a
04:52:36 12 prescriber that's -- I'm sorry, can you please not --

04:52:39 13 **Q** I'm sorry. I didn't know you didn't have it.

04:52:41 14 **A** So one might have a prescriber that's consistently
04:52:44 15 prescribing a single type of opioid. I mean, it raises a
04:52:48 16 flag, and the point is is that the flag then needs to be
04:52:50 17 reviewed and evaluated and a decision needs to be made by
04:52:57 18 the pharmacist, and it should be documented.

04:52:58 19 And so none of these are absolute, you know, always
04:53:02 20 bad, always good, but the point is that these are flags that
04:53:05 21 can help to improve the safe dispensing of these products.

04:53:09 22 **Q** And, Doctor, looking at your misconceptions, you say
04:53:12 23 "rogue physicians and doctor shoppers while important to
04:53:16 24 identify and manage account for a small proportion of
04:53:21 25 opioid-related harms," right?

04:53:22 1 **A** Yes, that's true.

04:53:23 2 **Q** And on -- I think you said that you have to document
04:53:26 3 red flags. Did you get that from Mr. Catizone's expert
04:53:30 4 report?

04:53:30 5 MR. WEINBERGER: Objection.

04:53:35 6 MS. SULLIVAN: I'll rephrase it, Your Honor.

04:53:37 7 THE COURT: Yes. I'll sustain the objection.

04:53:43 8 **Q** Dr. Alexander, you can't cite any law or regulation
04:53:45 9 that requires the documentation of red flags. You've got to
04:53:49 10 evaluate them, but there's no regulation that requires
04:53:51 11 documentation, sir, is there?

04:53:52 12 MR. WEINBERGER: Objection.

04:53:54 13 THE COURT: You can ask him if he -- if he
04:53:59 14 knows, he can answer it.

04:54:00 15 **A** Yeah, I didn't review carefully the laws and
04:54:03 16 regulations regarding what pharmacists have to document in
04:54:05 17 order to prepare for this case.

04:54:07 18 MS. SULLIVAN: Fair enough.

04:54:07 19 Thank you. I have nothing further, Dr. Alexander.

04:54:10 20 Safe travels.

04:54:11 21 THE WITNESS: Thank you.

04:54:16 22 THE COURT: Maybe I shouldn't ask, but I --
04:54:21 23 you can have one or two questions, two at the most.

04:54:23 24 MR. LANIER: No further questions for the
04:54:25 25 plaintiffs, Your Honor.

04:54:25 1 THE COURT: Thank you.

04:54:26 2 Doctor, you may be excused.

04:54:28 3 THE WITNESS: Thank you very much.

04:54:29 4 (Witness excused.)

04:54:29 5 THE COURT: All right. Ladies and gentlemen,

04:54:30 6 first I want to compliment you all on those excellent

04:54:34 7 questions. You know, I have this practice, but I've done it

04:54:40 8 in other trials. I've never had such probing questions, and

04:54:44 9 it shows each of you has really been paying attention to

04:54:47 10 some very complex testimony.

04:54:50 11 It being 5 of 5:00, we're not going to start another

04:54:54 12 witness at this point. So we'll recess for the evening.

04:54:57 13 Usual admonitions apply. Don't encounter, read,

04:55:01 14 listen, view anything in the media, don't discuss this case

04:55:04 15 with anyone.

04:55:06 16 And I'll add if our football team shows the same

04:55:09 17 degree of attention and diligence to detail that you have,

04:55:13 18 we'll be in good shape, all right? That's all I'll say.

04:55:16 19 Have a good evening, and I'll see you tomorrow

04:55:19 20 morning.

04:55:19 21 (Jury excused for the day at 4:55 p.m.)

04:55:48 22 THE COURT: Please be seated for a minute. I

04:55:50 23 just want to take care of a few administrative things.

04:55:52 24 I guess first, Mr. Lanier, who are you contemplating

04:55:56 25 for tomorrow? Because obviously we're off schedule, but

04:55:59 1 that's okay. Things have taken longer.

04:56:03 2 MR. LANIER: Well, we are a bit off schedule,
04:56:05 3 and so I would ask my elder statesman, Mr. Weinberger, who
04:56:11 4 we're putting on tomorrow.

04:56:13 5 THE COURT: You call him elder. I think
04:56:15 6 Mr. Weinberger and I are almost exactly the same age, so --

04:56:18 7 MR. WEINBERGER: I think that's true, Your
04:56:19 8 Honor.

04:56:19 9 MR. LANIER: Judge, I turned 61 yesterday. It
04:56:21 10 was my birthday.

04:56:22 11 THE COURT: Happy birthday.

04:56:23 12 MR. LANIER: I'm getting there.

04:56:25 13 THE COURT: It's a long rearview mirror for
04:56:28 14 me.

04:56:29 15 MR. WEINBERGER: I got him by almost 10 years.

04:56:34 16 Well, I think is Keyes in? So that I know that we
04:56:41 17 intend or hope to put on Dr. Keyes tomorrow.

04:56:45 18 THE COURT: Keyes. Oh, okay, who was on for
04:56:47 19 Friday.

04:56:48 20 MR. WEINBERGER: Yes. And we actually
04:56:50 21 intended to play the deposition of Steve Kneller, which is
04:57:00 22 about two hours.

04:57:01 23 MR. LANIER: We've got a set of depositions,
04:57:03 24 Your Honor, we were hoping to play today. There are three
04:57:05 25 of them. And so our goal --

04:57:07 1 THE COURT: Well, in some ways it's good to
04:57:09 2 break them up just for obvious reasons.

04:57:11 3 MR. LANIER: Yes. So we would maybe -- we
04:57:14 4 would love to get Keyes on and off the stand tomorrow, if
04:57:18 5 possible.

04:57:18 6 THE COURT: All right.

04:57:19 7 MR. LANIER: And other than that, we'll have
04:57:22 8 depos to play.

04:57:25 9 THE COURT: All right. That's fine. You've
04:57:27 10 got all these depositions. So it looks like in terms of
04:57:30 11 live witnesses for defendants' knowledge, it looks like it's
04:57:36 12 Dr. Keyes.

04:57:36 13 MR. LANIER: Yes, Your Honor.

04:57:37 14 THE COURT: All right. Fine.

04:57:38 15 I guess I'd appreciate the parties working together to
04:57:45 16 get the list of exhibits you want to admit through our last
04:57:50 17 two witnesses, Ms. Polster and Dr. Alexander, and just
04:57:55 18 indicate to me where there are objections and I'll have to
04:57:58 19 take those up. And I'll try and do it maybe sometime
04:58:02 20 tomorrow, either at 8:45 or at the lunch break.

04:58:10 21 There were a couple things filed, and I have not at
04:58:14 22 all forgotten about them. I was waiting to see -- all
04:58:17 23 right, first, both sides have submitted a proposed
04:58:25 24 instruction or limiting instruction about these settlements.
04:58:31 25 And there are some differences. I would greatly appreciate

04:58:35 1 if you can agree on one version. If not, I'll have to come
04:58:40 2 up with one.

04:58:41 3 Are you contemplating me giving this during the trial
04:58:45 4 or at some particular point or in the final instructions?

04:58:48 5 It was unclear.

04:58:51 6 MR. DELINSKY: Your Honor, I think it's the
04:58:53 7 defense request. Two things on the table. Number one, we
04:58:57 8 will, now that we have their competing instruction, we will
04:59:01 9 confer with them and see if we can find common ground.

04:59:03 10 THE COURT: Okay.

04:59:04 11 MR. DELINSKY: Okay, I can identify the
04:59:07 12 concept that they want introduced in it, I understand it, so
04:59:10 13 we will try.

04:59:11 14 THE COURT: Okay.

04:59:13 15 MR. DELINSKY: Number two, you raise a very
04:59:14 16 good caution, and I'd like to reserve on that and come back
04:59:17 17 to it.

04:59:17 18 THE COURT: All right. Well, as I said, I can
04:59:19 19 do both.

04:59:19 20 MR. DELINSKY: Right.

04:59:19 21 THE COURT: I mean, they're not mutually
04:59:23 22 exclusive, Mr. Delinsky.

04:59:25 23 MR. DELINSKY: Right.

04:59:26 24 THE COURT: There have been times where I've
04:59:27 25 said something during the trial, some instruction, which I

04:59:30 1 repeat in the final instructions. I don't have a problem
04:59:33 2 doing both. I just want to know what you're suggesting.

04:59:36 3 MR. DELINSKY: I think that's where we'll end
04:59:38 4 up, but I certainly want to confer with my codefendants.

04:59:41 5 THE COURT: All right. That's fine. You can
04:59:43 6 continue to work on that.

04:59:44 7 And there was -- well, jury instruction on CSA
04:59:52 8 regulations, so that was proposed by the defendants. And
04:59:57 9 this was another thing that we had talked about a while ago
05:00:03 10 that I wanted the parties -- I thought it probably is a good
05:00:08 11 idea.

05:00:08 12 So again, try and -- you know, I'd like you -- you
05:00:11 13 should be able to agree on something.

05:00:16 14 MR. WEINBERGER: Well, Your Honor, harkening
05:00:17 15 back to the status conference where we discussed this, your
05:00:19 16 suggestion was that we -- it not be a jury instruction but
05:00:24 17 rather by way of stipulation.

05:00:25 18 THE COURT: Or a stipulation.

05:00:26 19 MR. WEINBERGER: We got their draft that
05:00:29 20 you -- that has ultimately been submitted to you, and we
05:00:33 21 have lots of problems with that. And we are preparing a
05:00:37 22 response to that. I think it will probably get filed
05:00:43 23 tomorrow.

05:00:43 24 THE COURT: All right.

05:00:45 25 MR. WEINBERGER: And again, we'll try to

05:00:47 1 meet --

05:00:47 2 THE COURT: You can file it, and then,
05:00:51 3 Mr. Weinberger, why don't you file it, and then why don't
05:00:53 4 you confer and, as you are with the proposed instruction or
05:01:01 5 stipulation on settlement agreements, and if you can come to
05:01:04 6 some agreement, I will -- obviously if it's a stipulation,
05:01:09 7 I'll read it whenever you want me to read it.

05:01:11 8 MR. WEINBERGER: Okay.

05:01:12 9 THE COURT: If you can't, then I'll have to
05:01:16 10 work on it.

05:01:16 11 MR. WEINBERGER: Okay.

05:01:19 12 THE COURT: Okay. Was there anything else
05:01:22 13 that -- yes, Mr. Stoffelmayr.

05:01:25 14 MR. STOFFELMAYR: Yes, Your Honor, Kaspar
05:01:27 15 Stoffelmayr for Walgreens.

05:01:28 16 Just one housekeeping question, I have a proposal, we
05:01:30 17 want to confirm it's okay with the Court for Rule 50
05:01:34 18 motions. It looks like the plaintiffs will be resting early
05:01:37 19 next week. I assume all defendants will want to file a Rule
05:01:41 20 50 motion. What we would like to do, if it's okay with the
05:01:44 21 Court, is just move orally, you know, in court at the end of
05:01:47 22 the plaintiffs' case and then submit papers, say the
05:01:49 23 following day or whatever the Court's preference is. And if
05:01:53 24 we could also have some flexibility to allocate our pages so
05:01:56 25 that common issues could be handled together in a single

05:01:59 1 paper rather than repeating them on a defendant-by-defendant
05:02:02 2 basis. But we just want to make sure that proposal's
05:02:05 3 acceptable to the Court.

05:02:08 4 THE COURT: Yeah, I mean, it's much better to
05:02:10 5 have one. I mean, for a whole a lot of reasons. But it's
05:02:16 6 my intention to keep going. I'll read it, I'll get a
05:02:19 7 defendants'/plaintiffs' response, but I'm not going to
05:02:23 8 interrupt the trial.

05:02:23 9 MR. STOFFELMAYR: Well, understood. We're not
05:02:24 10 proposing -- not suggesting that at all, it's just that it
05:02:27 11 would be an oral motion to be filed by papers.

05:02:29 12 THE COURT: I think that's fine. I'd like you
05:02:32 13 to work together. It seems to me you could have one motion.
05:02:34 14 Obviously, there may be certain arguments that one defendant
05:02:37 15 makes and you highlight that.

05:02:37 16 MR. STOFFELMAYR: We're hashing that out.

05:02:40 17 THE COURT: There have to be some that you're
05:02:41 18 going to make together, and then it's easier for me to read
05:02:44 19 and the plaintiffs to respond. That's fine.

05:02:45 20 MR. STOFFELMAYR: Absolutely. Thank you,
05:02:46 21 Judge.

05:02:46 22 THE COURT: I'm not going to put a page limit
05:02:48 23 on it. You know that the longer it is --

05:02:52 24 MR. STOFFELMAYR: The less likely you'll read
05:02:53 25 it?

05:02:53 1 THE COURT: No, it will all be read, but
05:02:56 2 you -- the longer it is, the more likely it is that your
05:03:00 3 good arguments may be submerged. I'll leave it at that.

05:03:04 4 MR. STOFFELMAYR: Understood completely.

05:03:05 5 MR. MAJORAS: Your Honor, John Majoras.

05:03:07 6 Different issue. On the experts, not surprisingly in
05:03:13 7 a lot of defense cases, many of our experts are responding
05:03:15 8 directly to experts that are being offered by the plaintiffs
05:03:19 9 and their testimony that would come in, which sometimes is
05:03:22 10 truncated for good reason from what's in the report,
05:03:24 11 sometimes it's different than what's in their report.
05:03:26 12 Certainly my -- what I've seen in courts is that our experts
05:03:30 13 are allowed to review their testimony so they can respond
05:03:33 14 efficiently and appropriately. And I just want to make -- I
05:03:35 15 want to raise that with you to make sure you don't find that
05:03:38 16 as an issue with the sequestration order.

05:03:46 17 MR. WEINBERGER: We have maintained a
05:03:50 18 separation of witnesses among our experts. I don't know why
05:03:54 19 that should suddenly change. And that was discussed at the
05:03:59 20 beginning of the case, and I don't think we should change
05:04:02 21 it.

05:04:03 22 THE COURT: Well, this is a little different.
05:04:04 23 This is that -- well, this is new because -- let me ask you
05:04:25 24 this: I am sure that the experts on both sides reviewed the
05:04:29 25 other side's expert reports.

05:04:32 1 MR. MAJORAS: Yes, sir.

05:04:33 2 THE COURT: And were often testified about
05:04:36 3 them or they agreed, they disagreed and you were examined on
05:04:39 4 it.

05:04:40 5 MR. LANIER: True.

05:04:41 6 MR. WEINBERGER: And, Your Honor, with respect
05:04:43 7 to our experts that they say they want to have their
05:04:48 8 witnesses review, if anything, our experts limited their
05:04:54 9 opinions. They certainly didn't add additional opinions
05:05:01 10 that were not already disclosed either by way of --

05:05:04 11 THE COURT: That was -- I was -- when an
05:05:06 12 objection was interposed that this wasn't in so and so's
05:05:09 13 report, I usually sustained the objection.

05:05:12 14 MR. MAJORAS: But there are two issues, I
05:05:13 15 think, Your Honor. One is from an efficiency standpoint, if
05:05:17 16 they haven't, I agree, they have truncated the testimony of
05:05:20 17 what they had. I mean, these reports are massive. Experts
05:05:24 18 haven't testified about it. If I have an expert on a stand,
05:05:26 19 I don't want to be interrupted, say, oh, no, don't worry
05:05:28 20 about that, they withdrew that, otherwise they'd be talking
05:05:32 21 about something, making a criticism of the plaintiffs'
05:05:34 22 expert that was an opinion never even offered at trial.

05:05:36 23 And then the second thing --

05:05:42 24 THE COURT: Mr. Majoras, I don't think it
05:05:43 25 makes sense for you to be using your time having your

05:05:47 1 witness respond or rebut to something that wasn't said by
05:05:51 2 the other side. If they've got something affirmative, you
05:05:54 3 know, fine, but there's no point -- they may have been
05:05:58 4 prepared to respond to a whole lot of things, but if the
05:06:01 5 plaintiffs didn't choose to have their experts say it, you
05:06:05 6 don't need to respond to it.

05:06:06 7 MR. MAJORAS: That's why I'm asking that they
05:06:07 8 be able to see the testimony of the opposing expert, that
05:06:10 9 way they know what the person has said.

05:06:12 10 And I'll point out, specifically with Mr. McCann, his
05:06:16 11 testimony, the funnel of that was put in, the numbers that
05:06:19 12 he used, we had that big dispute, it was never in his
05:06:22 13 report. I don't know how I can make that -- I should be
05:06:25 14 able to make that available to my experts.

05:06:27 15 THE COURT: Well, I'll say this. If there was
05:06:29 16 something -- if there was something that one of the
05:06:33 17 plaintiffs' experts said that wasn't in his or her report
05:06:38 18 and you want your expert to respond to it, I think it's fair
05:06:40 19 to show that to your expert.

05:06:44 20 Do you disagree, Mr. Weinberger?

05:06:45 21 MR. WEINBERGER: No, Your Honor.

05:06:46 22 THE COURT: I mean, otherwise there's no way
05:06:48 23 to do it.

05:06:48 24 So there is an example that Mr. McCann hadn't actually
05:06:54 25 prepared that before, but he said it was derived from his

05:06:57 1 backup, et cetera. You can show your expert that, and if he
05:07:01 2 wants to say, well, guess what, I do the math, whenever I
05:07:06 3 get something different or whatever.

05:07:08 4 MR. MAJORAS: And I appreciate that. But
05:07:09 5 there is a whole series, there are lengthy discussion by
05:07:13 6 Mr. McCann about those numbers, about the funnel, everything
05:07:16 7 that came in. Without that background, it's going to be
05:07:20 8 extremely difficult for the expert to deal with that other
05:07:22 9 than if I start talking -- if the expert -- I don't want to
05:07:25 10 have to stand up in court and say if Mr. McCann said the
05:07:30 11 following, what do you think. I should do it efficiently.

05:07:34 12 MR. LANIER: Judge, the kind of questions he
05:07:35 13 should be asking are, you know, do you have an opinion on
05:07:39 14 how many numbers were this. Yes. What is your opinion. I
05:07:43 15 mean, those are -- those questions get directed by a lawyer.
05:07:48 16 You don't just say to the witness, hey, how do you respond
05:07:51 17 to their expert. I mean, that's not correct examination.

05:07:56 18 The examination needs to be you've got your report,
05:07:59 19 you've got your testimony, let me ask you this question, let
05:08:02 20 me ask you this question.

05:08:04 21 MR. MAJORAS: I'm quite able to ask questions
05:08:06 22 appropriately, Your Honor. But certainly being able to ask
05:08:09 23 a question, what is your response to the numbers that
05:08:13 24 Mr. McCann put up or the funnel that he used I think is
05:08:16 25 appropriate.

05:08:16 1 THE COURT: As I said, Mr. Majoras, if you
05:08:20 2 believe that one of their experts gave testimony that was --
05:08:27 3 that wasn't in the report and you want to ask your witness
05:08:31 4 about it, you can show him that portion of the expert's
05:08:34 5 testimony, and so you can say, you know, here's what the
05:08:41 6 experts -- plaintiffs' experts said, you know, what's your
05:08:44 7 opinion, do you agree, do you disagree, where is he or she
05:08:47 8 wrong. That's fair.

05:08:52 9 I don't know where that is, and I think you can -- you
05:08:55 10 know, you'll have to be accurate with that. But most of
05:09:00 11 what the plaintiffs' experts said was right out of their
05:09:04 12 report because if you thought it was different, you
05:09:09 13 objected. And so -- and I generally sustained those
05:09:12 14 objections. So I think that's the way to do it.

05:09:16 15 MR. MAJORAS: Thank you, Your Honor.

05:09:22 16 THE COURT: Anything else?

05:09:24 17 MR. WEINBERGER: Not for the plaintiffs.

05:09:29 18 THE COURT: Have good evening.

05:09:31 19 I have 3 1/2 for the plaintiffs and 2 1/2 for the
05:09:35 20 defendants today.

05:09:36 21 MR. LANIER: Your Honor, I just got a text
05:09:38 22 from Dr. Keyes that she's nervous about going tomorrow
05:09:41 23 because she's got to get done tomorrow, and she said when
05:09:45 24 she testified in West Virginia they crossed her for two days
05:09:49 25 and she's a little nervous about that.

05:09:51 1 THE COURT: Well, I'd be nervous too.

05:09:53 2 MS. SWIFT: It wasn't us.

05:09:55 3 MR. STOFFELMAYR: Your Honor, I will commit to

05:09:56 4 the Court it will not be a two-day cross-examination.

05:09:59 5 THE COURT: Well, no, I mean -- the sooner she

05:10:02 6 testifies, the sooner she'll get off. So delaying it isn't

05:10:06 7 going to help.

05:10:06 8 Mr. Lanier, about how long do you expect direct to be?

05:10:12 9 MR. LANIER: I would expect direct to be about

05:10:14 10 two hours, Your Honor.

05:10:17 11 THE COURT: All right. Well, I hope the cross

05:10:19 12 won't be more than two hours, but --

05:10:21 13 MR. STOFFELMAYR: I don't think so.

05:10:22 14 THE COURT: Okay. So we -- it will not be two

05:10:25 15 days.

05:10:25 16 MR. LANIER: Thank you, Judge.

05:10:26 17 THE COURT: I would have problem. Normally I

05:10:28 18 don't, you know, get involved, but we shouldn't have a

05:10:31 19 two-hour cross of a two-hour direct.

05:10:34 20 MR. STOFFELMAYR: Agreed.

05:10:35 21 THE COURT: By either side.

05:10:36 22 MR. LANIER: Thank you, Your Honor.

05:10:37 23 THE COURT: Okay. So tell Dr. Keyes that I

05:10:39 24 can't control it, but everyone's going to do our best to

05:10:42 25 have her on and off by the end of the day tomorrow.

05:10:44 1 MR. LANIER: We'll tell her you have it all
05:10:47 2 under control.

05:10:47 3 THE COURT: Don't say that because then she'll
05:10:49 4 blame me. I said we'll do our best.

05:10:49 5 MR. LANIER: Thank you, Judge. Understood.

05:10:52 6 THE COURT: Have a good evening.

05:10:53 7 (Proceedings adjourned at 5:10 p.m.)

8 * * * * *

9 C E R T I F I C A T E

10
11 I certify that the foregoing is a correct transcript
12 of the record of proceedings in the above-entitled matter
13 prepared from my stenotype notes.

14

15 /s/ Lance A. Boardman

Lance A. Boardman, RDR, CRR

10-21-2021

DATE

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